

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

**COMAU, INC.**

**Respondent Employer**

**and**

**Cases 7-CA-52614  
and 7-CA-52939**

**AUTOMATED SYSTEMS WORKERS LOCAL 1123,  
affiliated with CARPENTERS INDUSTRIAL  
COUNCIL, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA  
Charging Party**

**and**

**COMAU EMPLOYEES ASSOCIATION (CEA)  
Party in Interest**

**COMAU EMPLOYEES ASSOCIATION (CEA)  
Respondent Union**

**and**

**Case 7-CB-16912**

**AUTOMATED SYSTEMS WORKERS LOCAL 1123,  
affiliated with CARPENTERS INDUSTRIAL  
COUNCIL, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA  
Charging Party**

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**APPLICATION OF THE COMAU EMPLOYEES ASSOCIATION (CEA)  
FOR ATTORNEY FEES  
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

Now comes the Respondent Union, Comau Employees Association (“CEA”), by and through its counsel Pierce, Duke, Farrell & Tafelski P.L.C. and David Franks, P.C. and for its Application For Attorney Fees Under the Equal Access to Justice Act states as follows:

1. Under EAJA and the Board's implementing regulations, the Board shall award to an eligible respondent who prevailed in an adversarial proceeding the fees and other expenses incurred by the respondent unless the General Counsel's position was “substantially justified” or special circumstances make an award unjust. 5 U.S.C. § 504(a)(1); Section 102.144(a) of the Board's Rules and Regulations.
2. The charge against the CEA, in Case 7–CB–16912, was initially filed on May 20, 2010, amended on June 9, 2010, and further amended on July 8, 2010. The consolidated amended complaint, which included the charges against the employer in Cases 7-CA-52614 and 7-CA-52939, was issued on July 30, 2010.
3. The case was tried before ALJ Geoffrey Carter from August 31 - September 3, 2010, and from September 16-17, 2010. ALJ Carter issued his Decision on December 21, 2010. His decision was adverse to the CEA. The CEA filed exceptions to the ALJ’s Decision.
4. On June 27, 2012, the NLRB issued its Decision and Order, reversing the decision of the ALJ virtually in its entirety. In addition, the Board rejected the alternative theory which had been put forth by the Acting General Counsel.
5. The Board dismissed or rejected all of the positions of the Acting General Counsel which challenged the right of the CEA to represent the bargaining unit or the right of the employer to recognize the CEA. The one charge which the Board did uphold was, in the scope of this case, minor, to be remedied by a posting.

6. As a result of the Board's June 27, 2012 Decision and Order, the Acting General Counsel has lost his entire substantive case, and can no longer seek the relief requested.
7. The CEA is a prevailing party, in that the NLRB granted none of the material relief requested against the CEA.
8. The position of the Acting General Counsel in this case was not substantially justified.
9. There are no special circumstances which would make the award of fees unjust.
10. The CEA is a "party" as defined in the EAJA. For purposes of entitlement to a fee award:
  - (B) "party" means ...
    - (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed \$7,000,000 at the time the adversary adjudication was initiated, and which had not more than 500 employees at the time the adversary adjudication was initiated ...
11. The attached Declaration of Harry Yale, President of the CEA, confirms that the net worth of the CEA is less than \$7,000,000, and that the CEA employs fewer than 500 employees (Exhibit 1).
12. The CEA thus meets all of the requirements of the EAJA, and respectfully requests that the Board award to the CEA its fees to the maximum extent permitted by EAJA.
13. A statement of the CEA's attorney fees in connection with the applicable proceedings and exceptions is attached (Exhibit 2).
14. EAJA provides for an award of attorney fees and expenses incurred in litigating the fee request itself. *Commissioner, INS v. Jean*, 496 U.S. 154, 163-165 (1990). A separate statement of those fees is attached (Exhibit 3), but is subject to amendment as additional time is expended in the course of litigating this fee request.
15. The CEA's attorneys billed the CEA at the rate of \$250 per hour. The statute provides that attorney fees to be awarded "shall be based upon prevailing market rates for the kind and

quality of the services furnished.” As is shown in the brief in support of this Petition, the prevailing market rate in this case is no less than \$250 per hour. The attorneys expended 290.9 hours in defense of this matter and the exceptions, from June, 2010 through the Decision and Order of the Board on June 27, 2012. For that reason, the CEA seeks a fee award in the amount of \$72,725.00, in addition to an award for the fees incurred in making this Application.

16. In anticipation of an argument previously raised by the NLRB, as to whether the CEA actually incurred the charges reflected in the submitted invoices, the retainer agreement is attached as Exhibit 6.
17. However, the statute, which was adopted in 1996, also includes the directive that the court may award fees in excess of \$125 per hour only if the court determines that an increase in the cost of living justifies a higher fee, or alternatively if a higher fee is justified by a special factor, “such as” the limited availability of qualified attorneys for the proceedings involved.
18. In the present case, inflation justifies an award higher than \$125 per hour. The hourly rate set forth in the EAJA was adopted in 1996, i.e., 16 years prior to the attorney work in question. As is shown by Exhibit 4, the statistics maintained by the United States Bureau of Labor Statistics indicate that an hourly rate of \$125 per hour in 1996 is equivalent to a rate of \$173.72 per hour in 2010. All of the fees requested in this case were earned in 2010 or later. The undersigned counsel for the CEA obtained that information by visiting the website maintained by the United States Department of Labor Bureau of Labor Statistics at <http://data.bls.gov/cgi-bin/cpicalc.pl?> and inputting the appropriate data, including the years 1996 and 2010 and the dollar amount of \$125.

19. The CEA therefore requests that, at a minimum, the award be based on an hourly rate of \$173.72. At that hourly rate, the total award to the CEA would be \$50,378.80.
20. Special factors are also present in this case which justify an even higher award, at the prevailing market rate of \$250 per hour. The CEA has less than 200 members, and has a limited ability to raise funds through dues assessments. Of the fees incurred in this entire matter, including six full days of trial before an administrative law judge in 2010, preparation for that trial, and an appeal to the NLRB in 2011, no more than 40% have been paid to date. The CEA continues to make monthly payments but remains substantially in arrears. The supply of qualified labor law attorneys who would have taken on and remained in such a matter on such tenuous and extended terms of payment is very small. Because that willingness enabled the CEA to be properly represented, it would be appropriate to award the CEA its attorney fees at the full prevailing market rate. Other special factors supporting an award at the prevailing market rate are addressed in the brief in support of this Application.

**WHEREFORE** Comau Employees Association respectfully requests that the Board:

- A. Enter an award of fees in favor of the CEA in the amount of \$72,725.00 for attorney fees incurred by the CEA in the defense of this action;
- B. Further award the amount of \$7,750 for attorney fees incurred by the CEA in preparing this Application, representing 31 hours of work (through the date of filing this Application);
- C. Further award the CEA such additional fees as it may incur in responding to any objections to this Application; and,

D. Award such other amounts, and provide for such other relief, as the Board may determine to be appropriate.

Respectfully submitted,

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A handwritten signature in blue ink, reading "H. Catherine Farrell".

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P35248

Dated July 25, 2012

David Franks, P.C.  
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A handwritten signature in blue ink, reading "David J. Franks".

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P32320

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**BRIEF IN SUPPORT OF THE APPLICATION OF THE CEA  
FOR ATTORNEY FEES  
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

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## **STATEMENT OF THE CASE**

The Equal Access to Justice Act (“EAJA”) and the Board’s implementing regulations (5 U.S.C. § 504(a)(1); Section 102.144(a) of the Board's Rules and Regulations) authorize payment by the government of attorney’s fees and costs for successful litigation against the government. A litigant who establishes eligibility under the EAJA is entitled to a fee award for both litigating the case and litigating the fee request. The Equal Access to Justice Act provides that fees “shall” be awarded to a "prevailing party" in actions "brought by ... the United States" unless the position of the United States was “substantially justified” or special circumstances make an award unjust. 5 U.S.C. § 504(a)(1); *Precision Concrete v NLRB*, 362 F.3d 847, 851 (DC Cir, 2004). The burden lies with the government agency to show that its position was substantially justified. *E W Grobbel Sons, Inc. v NLRB*, 175 F.3d 875 (6<sup>th</sup> Cir, 1999).

At least three other decisions are connected with, and directly relevant to, the present case. This case is in an unusual posture, in that many of its substantive elements have been reviewed by federal judges. Indeed, every federal judge who has looked at this case has rejected the Board’s position. The Board therefore has the benefit of knowing how portions of this matter would likely be decided on appeal.

### **Relevant Related Cases**

#### **ALJ Decision in “Comau I”**

Prior to the present case, the Board had initiated an action against the employer based upon an alleged unfair labor practice. After a hearing, to which the CEA was not a party, ALJ Bogas found that the alleged ULP had in fact occurred. The Board affirmed. *Comau, Inc.*, 356 N.L.R.B. No. 21, 2010 WL 4622509 (Nov. 5, 2010). To distinguish it from the present case, this case will be referred to as “*Comau I*.” The present case is “*Comau II*.”

### **Decision of the United States Court of Appeals for the District of Columbia**

The employer appealed *Comau I* to the DC Circuit Court of Appeals. That Court reversed the Board, finding that its decision had been arbitrary and capricious. Since the Court found that no unfair labor practice had occurred, the entire basis of the Board's remaining case collapsed. The Opinion of the Court is attached as Exhibit 7.

### **Decision of the United States District Court for the Eastern District of Michigan**

On September 15, 2010, after the decision of ALJ Bogas but before the decision of ALJ Carter, the Board filed a 10(j) petition in the United States District Court for the Eastern District of Michigan, Case No 10-cv-13683 asking the Court to enjoin the CEA from representing the bargaining unit, enjoin the employer from recognizing the CEA, and other relief. District Judge Duggan denied the relief in its entirety. The Board appealed to the United States Court of Appeals for the Sixth Circuit, and all parties briefed the matter, but prior to oral argument, the Board consented to dismissal of the appeal after the above-described decision of the DC Circuit Court had rendered the case untenable. The federal District Court's Opinion and Order is attached as Exhibit 8.

### **Application for EAJA fees in the United States District Court case.**

In addition to the formal decision of the ALJ and the federal courts described above, the Board should be aware of the fact that the CEA applied for fees under EAJA following the final dismissal of the appeal in the 10(j) case. The Board and the CEA settled that Application. Nothing about that settlement is binding on the Board in this matter, of course, nor will this Brief disclose the terms of the settlement. But this Brief makes occasional reference to the "prior EAJA Application" and those references will only make sense in light of this information.

## **ARGUMENT**

### **I. The CEA is a Prevailing Party**

In the present case, this Board denied virtually all of the relief requested by the Acting General Counsel (“GC”) against the CEA. The GC sought to set aside a collective bargaining agreement for which a majority of the employees had voted, to evict the union which the employees had repeatedly chosen, and to install a union which the employees had repeatedly rejected and which many of them feared. All of that relief was denied. The CEA is therefore a prevailing party.

### **II. The Position of the Government Was Not Substantially Justified**

Attorney fees may be denied if the position of the government was substantially justified, but it is the obligation of the Board to show that its position was substantially justified. *Grobbell, supra*. If the GC fails to convince this Board that its position was substantially justified, the statute calls for an award of the CEA’s attorney fees.

#### **A. The Very Foundation of this Case Was Not Substantially Justified**

The United States Court of Appeals for the District of Columbia Circuit has had the opportunity to evaluate the position of the GC with regard to the facts at the very root of this case. (Opinion attached as Exhibit 7). The entire substantive foundation of the GC’s case was the theory that the employer, Comau, had committed an unfair labor practice on March 1, 2009 by putting into effect the health plan which was part of the contract it had legally announced and imposed on December 22, 2008 (the “Last Best Offer” or “LBO”). The employer and the CEA have maintained throughout these proceedings that the NLRB’s position was wrong, i.e., that the mere implementation of the health care plan was not an act separate from the imposition of the

LBO, and that the Regional Director himself had determined that the imposition of the contract was legal and valid.<sup>1</sup>

Prior to commencing the present action, the GC had brought an unfair labor practice complaint against the employer on the basis of that position, and the employer had appealed the Board's decision to the DC Circuit. Ultimately, that panel unanimously found that:

...the Board's finding that Comau committed a ULP when it unilaterally implemented the Company Plan was "arbitrary and capricious"... *Comau, Inc. v. National Labor Relations Board*, United States Court of Appeals, District of Columbia Circuit, Nos. 10-1406, 10-1409, Decided March 2, 2012 (Opinion, p. 12) (emphasis added)

That alleged unfair labor practice was the foundation of the GC's entire case. The DC Circuit has found the Board's position on that point to be arbitrary and capricious. Since the GC's foundational position has been found to be arbitrary and capricious, the GC can hardly now contend that its position was "substantially justified."

#### **B. The Existence of an Arbitrary and Capricious ALJ Finding Does Not Justify the Government's Actions**

It is anticipated that the government will rely on the decision by ALJ Bogas to argue that the government's position was substantially justified. In *Comau I*, ALJ Bogas determined that the employer had committed an unfair labor practice. The Board affirmed that decision in its Decision and Order dated November 5, 2010.

But the DC Circuit has already reviewed that decision, and has found it to be "arbitrary and capricious." An arbitrary and capricious finding can hardly constitute proof that a position is reasonable.

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<sup>1</sup> The Director dismissed, after an investigation, earlier charges filed by the ASW alleging that Comau's December 2008 announcement and implementation of its last best offer violated Section 8(a)(5). See *Comau*, 356 NLRB No. 21, slip op. at 8 (2010).

The mere existence of a prior administrative decision does not mean that the government's position was reasonable. For instance, in *Isbell v. Chater*, 934 F.Supp. 1129 (E.D.Mo. 1996), the Social Security claimant was entitled to recover attorney fees, pursuant to Equal Access to Justice Act (EAJA), where the administrative law judge's (ALJ) findings in initially denying the claim were patently inconsistent and unreasonable.

Similarly, in *Gutierrez v. Sullivan*, 953 F.2d 579 (10<sup>th</sup> Cir, 1992), the United States Court of Appeals for the Tenth Circuit held that, where the ALJ's decision was unreasonable, the position of the government was not justified. In *Rother v. Shalala*, 869 F.Supp. 899 (D.Kan., 1994), and in *Elzey v. Chater*, 927 F.Supp. 1436 (D.Kan., 1996), the court rejected the reasons cited by the ALJ and held that the government's position was unjustified.

In the present case, there is no need to review or to analyze in detail the decision of the ALJ or of the Board in *Comau I*; the Court of Appeals for the District of Columbia Circuit has already performed that function. The Court found that ALJ Bogas had no case law to support his novel "point of no return" theory, that the cases he relied upon did not, in fact, support that theory, and that, in oral argument before the DC Circuit panel, the Board's own counsel conceded that, "no . . . specific case" supported the ALJ's "point of no return" articulation. Opinion, p14.

Since the ALJ's decision was unsupported by the case law, it can hardly be used to show that the position of the Board in this case was justified. Since the Board's own counsel conceded to the Court that there was no case law which supported his theory, and since the Board could or should have been aware of that problem when ALJ Bogas issued his decision, the Board cannot rely on his decision by claiming ignorance of its fundamental flaw. And since ALJ Bogas issued his decision on May 20, 2010, the same day the present action was commenced, the Board

should have been aware of that flaw from the beginning, and should never have commenced the present proceeding.

**C. The “Agency Theory” of the Government  
Was Not Substantially Justified**

In addition to its central argument based on the alleged unfair labor practice, the GC also argued that some of the founders of the CEA were agents of the employer by virtue of the fact that they were “team leaders.” This Board determined that it could “*quickly dispose of*” that second theory, and dispensed with that argument.

In fact, that argument was so thread-bare that the GC abandoned it in the appeal of the 10(j) case, stating that “the Director’s agency theory, originally alleged in the petition, is not being appealed to this Court for consideration.” Corrected Brief of Acting General Counsel-Appellant Glasser, fn. 8. Since the GC’s position flatly contradicted the applicable statute, and was abandoned on appeal without even an effort to explain why it did not contradict the statute, the GC can hardly claim now that its position was substantially justified.

**D. The Position of the Government Regarding the Causal Relationship  
Between the Unfair Labor Practice and the Employee Dissatisfaction  
Was Not Substantially Justified**

As noted above, in order to justify the burden and expense of this proceeding, the GC first had to establish reasonable cause to believe that the employee dissatisfaction was caused by the March 1, 2009 implementation of the new health care plan. The District Court in the 10(j) case rejected that claim, and its analysis of that claim speaks for itself:

There is no evidence that the March 1, 2009 implementation of the new health care plan led to lingering resentment toward the ASW/ MRCC causing bargaining unit members to sign the disaffection petition and Authorization for Representation forms in December 2009. The evidence, to the contrary, indicates that the decision to pursue the disaffection petition was born out of the NLRB’s failure to act on the decertification petition filed on April 14, 2009, and the reminder as the administrative proceedings ensued that the petition was being

delayed by the unfair labor charges against Comau. The Court finds no evidence that any employee discontent arising from the implementation of the new health care plan was carried forward by the administrative hearing. Significantly, the CBA that Comau and the CEA subsequently negotiated and the bargaining unit ratified included the very same health insurance plan that Comau unilaterally implemented on March 1, 2009. (Opinion and Order, p. 24) (emphasis added)

In other words, not only was there no evidence to support the position of the NLRB; there was convincing evidence to the contrary. Furthermore,

The problem in this case, however, is that employee discontent with the ASW/MRCC preceded the alleged unfair labor practice. In fact, the decertification petition was signed by a sufficient number of bargaining unit members (71) before March 1, 2009— when Comau unilaterally implemented the new health care plan— to require the Board to take a vote to certify the results. (Opinion and Order, p. 22) (emphasis added)

and:

[T]he evidence indicates that erosion of support for the ASW/MRCC reached a level sufficient to require an election before the unlawful labor practice occurred. (Opinion and Order, p. 26) (emphasis added)

The CEA had raised this argument with the GC throughout the Board proceedings. There can be no doubt that the GC was aware of the issue. Yet the GC ignored the evidence that the dissatisfaction pre-existed the unfair labor practice, and despite that knowledge, filed the present action and persisted in prosecuting it long after it had become aware of the evidence.

In fact, the NLRB did more than ignore the evidence. Despite the obvious importance of early discontent, the NLRB failed to advise the Court of that critical fact. The Board stated at least twice in its Memorandum to the District Court that the decertification petition was filed with the Board on April 14, 2009, after the alleged ULP.<sup>2</sup> At another point, the Board reiterated that it was filed with the Board six weeks after the ULP.<sup>3</sup> But at no time did the Board choose to disclose the fact that so many members of the bargaining unit had signed the petition against the

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<sup>2</sup> Memorandum in Support of Petition, pages 2 and 10

<sup>3</sup> Memorandum in Support of Petition, p. 27



ASW/MRCC before the unfair labor practice. The Board also chose to omit from its Memorandum the fact that even the executive committee of the ASW itself had voted before March 1 to decertify its own union.

Furthermore, the Court “flatly rejected” the NLRB’s alleged evidence that meeting attendance had been caused to decline by implementation of the health care plan. Indeed, said the Court:

David Baloga’s assertion in his affidavit, notably prepared by Acting General Counsel’s counsel, that membership at ASW/MRCC meetings began to drop after March 1 is contrary to the meeting records and appears intentionally misleading. (Opinion and Order, p. 25) (emphasis added)

The District Court did acknowledge that there was “a scintilla of evidence suggesting a causal relationship between the alleged ULP and the disaffection of at least some members of the bargaining unit,” although the Court questioned whether it was sufficient to even satisfy the Board’s slight burden to demonstrate reasonable cause. (Opinion and Order, p. 24-25). But the Board’s possession of a scintilla of evidence pertaining to only a few employees hardly constituted substantial justification for bringing an action to shut down an entire union and deprive the employees of their chosen bargaining agent.

For all of these reasons, it is clear that the position of the government in this case was, from the very outset of the case, not substantially justified.

**E. Even if the case had been justified at the beginning, it was no longer justified after the Acting General Counsel had investigated the case.**

When Judge Duggan elaborated in detail the reasons that the alleged ULP did not support the Board’s position, he was saying nothing new. All of the necessary information, including the numbers of bargaining unit members who had signed the petition and the existence of widespread CEA support prior to the alleged ULP, was known to the GC before the commencement

of this action, and certainly before the beginning of the six-day hearing before ALJ Carter. So even if the GC had commenced this action in good faith, there early came a time when they should have dismissed it.

In *Raley's and Independent Drug Clerks Assn.*, 357 NLRB No. 81, p. 2 (2011), the Board faced a similar situation in a case involving an EAJA application. The Board determined that by the time the Board had put in its proofs in the principal hearing before the ALJ, they should have known that they had no case and should have dismissed the case. The Board's continuation of the action after that point was unjustified, and required an award of fees under EAJA.

In the present case, even commencement of the action was unjustified. But even if it was justified at that point, the action should not have been continued after the Board learned how many employees had signed the petition, or learned that the executive board of the ASW (the former union) had itself voted against the ASW and in favor of the CEA. The Board's continuation of its attack after that point was unjustified, and an award of fees is appropriate under EAJA.

**F. The Board's Effort to Remove the Employees' Chosen Union  
and Set Aside the Collective Bargaining Agreement  
Was Not Substantially Justified.**

The GC could have chosen any number of remedies for the alleged unfair labor practice. But the GC chose the most extreme approach possible: to eviscerate the CEA, to set aside a collective bargaining agreement and to impose upon the employees a union which they had repeatedly rejected and which they feared. There was no reasonable justification for that aggressive approach. Indeed, the District Court had this to say about it:

In this Court's view, enjoining the representation of members by their chosen union, requiring them to be represented by a union they rejected without coercion, and blocking the enforcement of a CBA negotiated by the union chosen by the

membership and ratified by the members is contrary to the NLRA's goals. (Opinion and Order p. 27).

For all of these reasons, the GC's position was not substantially justified, and the CEA should be awarded its attorney fees pursuant to the EAJA.

**G. Seen as an Integrated Whole, the Board's Challenge to the Legitimacy of the CEA was Not Justified.**

The Board's unrelenting challenge to the legitimacy of the CEA should be seen as a single attack, and not evaluated piece-by-piece.

For the purpose of deciding whether litigation was substantially justified, "EAJA ... favors treating a case as an inclusive whole rather than as atomized line-items." *Commissioner, INS v. Jean*, 496 U.S. 154, 161-162 (1990); *C. Factotum*, 337 NLRB 1, 1 (2001). Further, the Board must determine whether the allegations [in a particular case], as "an inclusive whole," were substantially justified at each phase of the litigation. *Glesby Wholesale*, 340 NLRB 1059, 1060 (2003). *Raley's and Independent Drug Clerks Assn.*, 357 NLRB No. 81, p. 2 (2011).

In the present case, looking at the pieces separately would cause the Board to miss the truth of this case. The NLRB threw the weight and muscle of the federal government into crushing the CEA even though:

(a) the Board should have known that the one, solitary alleged unfair labor practice upon which it relied wasn't an unfair labor practice at all;

(b) even if it had been a true unfair labor practice, the evidence clearly showed that it had played a trivial role, if any role at all, in the decision of the majority of the bargaining unit to reject the ASW and choose the CEA, as District Court Judge Duggan found in the 10(j) action.

In *Raley's and Independent Drug Clerks Assn.*, 357 NLRB No. 81, p. 2 (2011), Member Hayes could have been speaking about this case when he said in his partial concurrence:

Thus, the bulk of the General Counsel's case, including his central allegations, lacked a substantial justification from the start. Viewing the case as an inclusive whole, as the Board must, leads to the conclusion that the EAJA award

should commence from the date on which the second amended complaint issued. In this case, the General Counsel brought the vast litigation resources of the federal government to bear on a small organization without having conducted a reasonably thorough investigation or having formulated a reasonable legal theory based on the results of such an investigation. EAJA was enacted to deter precisely such conduct as well as to make whole a respondent harmed by such unjustified government prosecution. *Raley's, supra*, p. 7.

### **III. All of the Hours Worked Should be Awarded at Prevailing Market Rates**

With regard to the rates at which attorney fees are to be awarded, the EAJA provides:

(A) “fees and other expenses” includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party’s case, and reasonable attorney fees. The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that

- (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and
- (ii) attorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

#### **A. Prevailing Market Rates are Appropriate in this Case**

The CEA has been represented throughout this matter by two attorneys, M. Catherine Farrell and David J. Franks. Both have charged the CEA at the rate of \$250/hour, and the CEA has paid at that hourly rate, i.e., with no discounting. Because the amount of work in this case has been very large, and because the CEA is such a small union, a substantial portion of the fees remain unpaid. The CEA requests that its fees be awarded at the full hourly rates.

The EAJA first provides that the amount of fees awarded shall be based upon prevailing market rates for the kind and quality of the services furnished. Prevailing market rates can be determined in a number of ways, and the statute provides no specific guidance as to how that

number is to be calculated. The fees in this case were incurred in 2010 and 2011. The first question, then, is what the prevailing market rate was beginning in 2010.

An excellent, neutral and relevant answer to that question has been provided by the State Bar of Michigan. Exhibit 5 is a report entitled 2010 Economics of Law Practice in Michigan; The 2010 Desktop Reference on the Economics of Law Practice in Michigan, published in March, 2011. That report, based on survey responses from 3,775 attorneys in Michigan, provides a reasonably definitive answer to the question.

The report is broken down into several subsets, such as years in practice, geographical region, and so on. For purposes of this analysis, the following factors are relevant: Both Ms. Farrell and Mr. Franks have been in practice more than 30 years. Both practice in the greater Detroit metropolitan area. The work in this case is specialized, involving labor law practice, federal court litigation and federal court appellate work. There is, of course, no single chart or report which includes all of those and only those factors, but there are several which are relevant, and which confirm that the prevailing market rate is at least, and in fact in excess of, \$250 per hour. The billing rates cited in this Brief are found in the tables on pages 9-13 of the report.

First, the report shows that the average (“mean”) rates for attorneys with more than 30 years of practice is \$253 per hour.

The following table show the average rates for other relevant categories:

<b>Category</b>	<b>Average Hourly Rate</b>
Labor Law – Defendant	284
Labor Law - Plaintiff	181
Rate by County: Oakland (Location of CEA)	254
Rate by County: Wayne (Location of Detroit office)	255

Employment Litigation (Defendant)	260
Employment Litigation (Plaintiff)	256
Appellate Law	259

It should be noted that all of the above averages include all practitioners, from senior partners to freshly-minted associates with minimal experience. This under-states the prevailing market rate for attorneys with greater experience. For instance, the average hourly rate for all attorneys with 3-5 years of experience is \$189, as opposed to an average of \$253 for attorneys with the experience of Ms. Farrell and Mr. Franks. Since both Ms. Farrell and Mr. Franks each have more than 30 years of experience, and are thus at the higher end of the experience range, a better measure would be the 95<sup>th</sup> percentile of each category, rather than the average. The following table shows those rates:

<b>Category</b>	<b>Hourly Rate – 95<sup>th</sup> Percentile</b>
Labor Law – Defendant	485
Labor Law - Plaintiff	325
Rate by County: Oakland (Location of CEA)	450
Rate by County: Wayne (Location of Detroit office)	485
Employment Litigation (Defendant)	450
Employment Litigation (Plaintiff)	400
Appellate Law	450

The available information thus makes it clear that the prevailing market rate for the kind and quality of the services furnished is at least \$250 per hour.

**B. Market Rate Fees are Appropriate Because Counsel Represented the CEA  
Despite the Substantial Risk of Non-Payment**

The CEA's requested fees should be paid at the market rate as fair compensation for the unlikelihood that counsel would ever being paid if the CEA were to lose the case. As requested in the CEA's Application, fees should be enhanced because the CEA was unlikely to find counsel who would take this case on such a risky basis. In *Northcross v. Board of Ed.*, 611 F.2d 624 (6th Cir. 1979), the Sixth Circuit stated:

In many cases [the routine hourly rate] is not "reasonable," because it does not take into account special circumstances.... Perhaps the most significant factor in these cases which at times renders the routine hourly fee unreasonably low is the fact that the award is contingent upon success.... If he or she will only be paid in the event of victory, those rates will be adjusted upward to compensate for the risk the attorney is accepting of not being paid at all. *Id.* at 638. (emphasis added)

In this case, if the NLRB been successful, the union would have had no ability to pay the significant fees incurred in this case. As it is, a significant portion of counsel's fees remain due and owing. The CEA requests that the Board award its fees at the rate of \$250 per hour.

**C. The Amount of Time Expended Was Reasonable and Necessary  
In Light of the Effort Required**

The attorneys for the CEA expended 290.9 hours in this case. The defense of the CEA included a thorough investigation of the case and its factual basis, meetings with multiple witnesses and members of the union, a review of the pleadings and history of the preceding case (*Comau I*), review of the relevant case law in this relatively unusual case, preparation for trial, including the development of exhibits and preparation of witnesses, the conduct of a six-day hearing before ALJ Carter, preparation of post-hearing brief, preparation of exceptions and a supporting brief and of a brief in response to the GC's cross-exceptions. All of that time was reasonable and necessary.

This case was intensely fact-driven. The Board introduced into the record in this case the transcript and exhibits from *Comau I*, thus choosing to expand the scope of the materials to be read, reviewed and argued. The CEA's attorneys prepared the Brief in Support of Exceptions while surrounded by 8 boxes of printed material, all of which was at least potentially relevant.

The hours required were entirely the result of the complexity of this matter and the intensively fact-based approach chosen by the NLRB. While the Board had every right to present the case in the manner it saw fit, and while the CEA does not criticize the NLRB for its fact-based approach, nevertheless the Board should not evade responsibility for the legal fees which were necessarily expended in responding.

#### **D. The Defense of This Case Required The Participation of Two Attorneys**

In the prior EAJA case, the NLRB, in a brief signed by two attorneys, sharply and repeatedly criticized the CEA's counsel for using two attorneys, referring to it as duplicative. It is not known whether a similar criticism will be made in the present case, but if so, it is worth noting that at every step of this case, at least two attorneys for the Board were involved in every activity.

For instance, the Board was represented at all times throughout the hearing by two attorneys, Darlene Haas Awada and Sarah Pring Karpinen. The GC's post-hearing brief to ALJ Carter was signed by the same two attorneys. The GC's Cross-Exceptions were also signed by Darlene Haas Awada and Sarah Pring Karpinen, as was the brief in support of those Cross-Exceptions. The NLRB's own actions indicate that this case was sufficiently complex that it required at least two attorneys. The CEA agrees; zealous and appropriate representation required the use of two attorneys. It would not be appropriate for the GC now to argue that the CEA should have understaffed its responsive team.



### **E. Block Billing Was Appropriate in Much of This Case**

It is anticipated that the GC will criticize the CEA's counsel for billing in blocks of time. But that was the appropriate method to bill much of the time in this case. For instance, during five full days of trial, it would have been absurd to bill separately for each issue raised, each objection made, or each witness cross-examined. It is clear enough that, from the moment of arrival at the courtroom until departure from that courtroom, counsel were engaged in the hearing or in business connected with it. Certainly all other work for other clients was effectively precluded.

Similarly, the work done to prepare for the next day need not be detailed by the tenth of an hour. Any experienced trial attorney knows that trial preparation is intense, grueling and multi-faceted. Counsel met with witnesses, prepared questions for direct- and cross-examination, revised previous plans in light of new testimony during the day, researched issues which had been newly raised or about which new information had been made available during the day, and prepared exhibits for the following day's trial.

The GC may argue that the time billed for preparing the exceptions and supporting brief should have been billed in more detail. But preparation of a brief is not like reading a letter or talking on the telephone, which can be billed in small increments. Writing a brief is done in large chunks of time. Counsel for the NLRB knows full well that brief writing requires large blocks of time, and it would be surprising were the NLRB to argue against such a normal attorney practice.

### **IV. The CEA Should Be Awarded its Attorney Fees Incurred in Preparing and Litigating the Present EAJA Application**

The EAJA provides for an award of attorney fees and expenses incurred in litigating the fee request itself. *Commissioner, INS v. Jean*, 496 U.S. 154, 163-165 (1990). A separate

statement of those fees and expenses is attached (Exhibit 3), but is subject to amendment as additional time is expended in the course of litigating this fee request.

### **REQUEST FOR RELIEF**

**WHEREFORE** Respondent Union Comau Employees Association respectfully requests that this Honorable Court:

A. Enter an award of fees in favor of the CEA in the amount of \$72,725.00 for attorney fees incurred by the CEA in the defense of this action;

B. Further award the further amount of \$7,750.00 for attorney fees incurred by the CEA in preparing the EAJA Application (through the date of filing the Application);

C. Further award the CEA such additional fees as it may incur in responding to any objections to this Application; and,

D. Award such other amounts, and provide for such other relief, as the Board may determine to be appropriate.

Respectfully submitted,

Pierce Duke Farrell & Tafelski, PLC  
Attorneys for Respondent CEA  
2525 S Telegraph Rd Ste 100  
Bloomfield Hills, MI 48302  
(248) 852-1365



catherine@farrellesq.com  
P35248

David Franks, P.C.  
Attorneys for Respondent CEA  
19678 Harper Avenue #203  
Grosse Pointe Woods, MI 48236  
(313) 825-0700



[dfranks@franksconnect.com](mailto:dfranks@franksconnect.com)  
P32320

Dated July 25, 2012

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**COMAU, INC.**

**Respondent Employer**

**and**

**Cases 7-CA-52614  
and 7-CA-52939**

**AUTOMATED SYSTEMS WORKERS LOCAL 1123,  
affiliated with CARPENTERS INDUSTRIAL  
COUNCIL, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA  
Charging Party**

**and**

**COMAU EMPLOYEES ASSOCIATION (CEA)  
Party in Interest**

**COMAU EMPLOYEES ASSOCIATION (CEA)  
Respondent Union**

**and**

**Case 7-CB-16912**

**AUTOMATED SYSTEMS WORKERS LOCAL 1123,  
affiliated with CARPENTERS INDUSTRIAL  
COUNCIL, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA  
Charging Party**

---

**DECLARATION CONCERNING NET WORTH  
AND NUMBER OF EMPLOYEES  
OF THE APPLICANT, COMAU EMPLOYEES ASSOCIATION**

Harry Yale states as follows:

1. I am the President of the Comau Employees Association ("CEA") and am personally familiar with the financial condition, assets and employees of the CEA.
2. The total assets of the CEA, including cash on hand, bank accounts and all other assets, are substantially less than \$7,000,000.
3. At the time this proceeding was commenced, the net worth of the CEA was less than \$7,000,000.
4. The CEA is a labor organization and has no employees. Therefore, at the time this proceeding was commenced, the CEA had less than 500 employees.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 23rd, 2012.

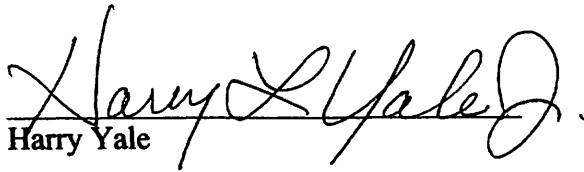
  
Harry Yale

Exhibit 2  
Law Offices

PIERCE, DUKE, FARRELL & TAFELSKI PLC  
2525 S. TELEGRAPH  
SUITE 100  
BLOOMFIELD HILLS, MI 48302

MARK C. PIERCE  
EDWARD E. DUKE II  
M. CATHERINE FARRELL  
PAUL TAFELSKI  
ANDREW MCKINNON

Invoice Through August 19, 2010

June 20, 2010	Meeting and drafting of retained agreement	3.0	nc
June 23, 2010	Conference w/ DF re: Dana decision and contract	.5	125
July 8, 2010	Meeting w/ Employer's counsel for review of file	1.5	375
July 10, 2010	Analysis of legal issues discussions with DF	1.0	375
July 11, 2010	Review of second amended complaint	.4	100
July 20, 2010	Meeting w/ CEA introducing DF and related issues	1.9	225
July 22, 2010	Conference call w/ DF and drafting position statement		
	Final version	2 .5	625
August 2, 2010	Review of amended complaint and discussion of		
	Motion for a Bill of Particulars and Postponement	.7	175
August 3, 2010	Meeting w/ CEA officers re: amended complaint and		
	Planned strategy	2.3	575
August 12, 2010	Review of answer to consolidated complaint, approach		
	And discussion of subpoenas	1.5	375
August 19, 2010	Conference call with ALJ and counsel, preparation for		
	Call and debriefing regarding call w DF	1.3	325

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SUITE 100  
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EDWARD E. DUKE II  
M. CATHERINE FARRELL  
PAUL TAFELSKI  
ANDREW MCKINNON

Invoice Through September 3, 2010

August 20	Meeting w client	4.0
August 22	Prepping for client meeting incl	
	Reviewing files for subpoena	6.0
August 25	Meeting and prepping for trial	10.0
August 26	Meeting and prepping for trial	6.0
August 26	prep for hearing	10.0
August 27	Prep for hearing	6.0
August 29	Meeting w Dan Molloy	4.0
August 30	prep for evidentiary hearing	10.0
August 31	Attendance at hearing	12.0
Sept 1	Attendance @ hearing	12.0
Sept 2	Attendance @ hearing	12.0
Sept 3	Attendance @ hearing and	
	Associate telephone calls	
	incl research	6.0

## David Franks, P.C.

20020 Harper Avenue  
Suite Ten  
Harper Woods, MI 48225  
(313) 825-0700

Invoice #: 1244  
Through 9/3/10

Comau Employees Association

---

### Matter Info:

Matter Name: Certification and Bargaining

<u>Work Performed</u>	<u>Date</u>	<u>Rate</u>	<u>Time</u>	<u>Fee</u>
Meeting with Catherine Farrell to prepare for hearing; preparation of witness & subpoena lists, review of prior testimony, et al	8/20/10	250.00	07:30	1,875.00
Meeting with CEA; meeting with Catherine Farrell to prepare for hearing	8/24/10	250.00	04:00	1,000.00
Trial preparation;	8/25/10	250.00	00:04	16.67
Trial preparation and review; draft of amended answer, subpoenas, et al	8/26/10	250.00	00:06	25.00
Trial preparation; telephone conferences with witnesses, correspondence to board and counsel, et al	8/27/10	250.00	00:06	25.00
Trial Preparation	8/30/10	250.00	08:00	2,000.00
Trial and trial preparation	8/31/10	250.00	12:00	3,000.00
Trial and trial preparation	9/1/10	250.00	12:00	3,000.00
Trial and trial preparation	9/2/10	250.00	12:00	3,000.00

Trial

9/3/10

250.00

05:00

1,250.00



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SUITE 100  
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M. CATHERINE FARRELL  
PAUL TAFELSKI  
ANDREW MCKINNON

Amended Invoice October 18, 2010

Balance forward from Sept 3, 2010 Invoice  
**\$39, 216.67** ( excludes \$1,884.50 in subpoena costs)

Sept 16, 2010	Attendance at evidentiary hearing	10.0
Sept 17, 2010	Attendance at Evidentiary hearing	4.0
October 5, 2010	Attend Baloga depo and prepare 10(j) injunction response	<sup>3</sup> 8.0

# David Franks, P.C.

20020 Harper Avenue  
Suite Ten  
Harper Woods, MI 48225  
(313) 825-0700

Invoice #: 1260  
9/4/2010 through 10/11/2010

Comau Employees Association

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## Matter Info:

Matter Name: Litigation - NLRB and Federal Court

<u>Work Performed</u>	<u>Date</u>	<u>Rate</u>	<u>Time</u>	<u>Fee</u>
Preparation for resumption of trial	9/15/10	250.00	08:00	2,000.00
Trial, and preparation for following day	9/16/10	250.00	10:00	2,500.00
Trial	9/17/10	250.00	04:00	1,000.00

Attendance at Dave Baloga  
deposition; ~~draft response to~~  
10(j)-petition

10/5/10

250.00

3.0  
.06:00

~~1,500.00~~

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2525 S. TELEGRAPH  
SUITE 100  
BLOOMFIELD HILLS, MI 48302

MARK C. PIERCE  
EDWARD E. DUKE II  
M. CATHERINE FARRELL  
PAUL TAFELSKI  
ANDREW MCKINNON

Invoice Oct 20 through Dec 31, 2010

Balance Forward of \$ 39,216.67 + \$32, 185.33 current invoice = \$ 71,402.00 less  
payment of \$ \$7,500.00 = \$63,902.00 .

Oct 20,	Meeting w DF and prep for drafting post Hearing Brief	4.0
Nov 9	Planning Conference w DF	2.0
Nov 12	Review of Documents and response w DF	2.0
Nov 16	Telephone conference on Briefing schedule	.9
Dec 7	Meeting w Willie Rushing and DF	1.3
Dec 9	Telephone conference w DF and factual Issues	.7
Dec 22	working on 7 RD 3644	2.0
Dec 27	Assisting in filing brief in 7 RD 3644	1.0

# David Franks, P.C.

20020 Harper Avenue  
Suite Ten  
Harper Woods, MI 48225  
(313) 825-0700

Invoice #: 1290  
10/12/10 through 11/5/10

Comau Employees Association

Matter Name: Litigation - NLRB and Federal Court

<u>Work Performed</u>	<u>Date</u>	<u>Rate</u>	<u>Time</u>	<u>Fee</u>
Preparation of post-hearing brief and proposed findings of fact and conclusions of law	10/20/10	250.00	02:30	625.00
Legal research; draft of post-hearing brief	10/22/10	250.00	02:00	500.00
Review of correspondence related to recent charges; analysis of Board's efforts to use those charges to counter-attack the CEA	10/22/10	250.00	00:30	125.00
Review of NLRB Request for concurrence; legal research	10/25/10	250.00	00:36	150.00
Preparation of post-hearing brief	10/28/10	250.00	02:00	500.00
Preparation of brief	11/1/10	250.00	02:00	500.00
Preparation of brief	11/2/10	250.00	05:00	1,250.00
Preparation of brief	11/4/10	250.00	09:00	2,250.00

**PIERCE, DUKE, FARRELL & TAFELSKI PLC**  
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**SUITE 100**  
**BLOOMFIELD HILLS, MI 48302**

MARK C. PIERCE  
EDWARD E. DUKE II  
M. CATHERINE FARRELL  
PAUL TAFELSKI

# January 2011 CEA Invoice

**January 31, 2011**

**Conference call w DJF re: Judge Rothstein (NLRB)**

**Defenses to ULP charges**

**1.1**

**fax 248 852 5161**

## David Franks, P.C.

20020 Harper Avenue  
Suite Ten  
Harper Woods, MI 48225  
(313) 825-0700

Invoice #: 1311  
12/23/10 through 1/13/11

Comau Employees Association

---

### Matter Info:

Matter Name: Litigation - NLRB and Federal Court

<u>Work Performed</u>	<u>Date</u>	<u>Rate</u>	<u>Time</u>	<u>Fee</u>
Preparation and filing of Request for Review 7- RD-3644	12/27/10	250.00	03:00	750.00
Review of Order transferring matter to Board; telephone conferences with employer counsel re same, re concurrence in request for extension, et al	12/28/10	250.00	01:06	275.00
Telephone conferences re ADR process; preparation of correspondence re extension; review of request for expedited hearing	12/29/10	250.00	02:06	525.00
Telephone conferences with NLRB ADR administrator and with attorneys for general counsel re mediation and/or settlement through NLRB mediation services	1/4/11	250.00	02:12	550.00

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**SUITE 100**  
**BLOOMFIELD HILLS, MI 48302**

**MARK C. PIERCE**  
**EDWARD E. DUKE II**  
**M. CATHERINE FARRELL**  
**PAUL TAFELSKI**  
**ANDREW MCKINNON**

**CEA Invoice February 2011**

<b>Feb 4, 2011</b>	<b>Conference call w/ Judge Rosenstein</b>	<b>1.0</b>
--------------------	--	------------



## David Franks, P.C.

20020 Harper Avenue  
Suite Ten  
Harper Woods, MI 48225  
(313) 825-0700

Invoice #: 1372  
8/30/11

Catherine Farrell  
Comau Employees Association  
catherine@farrellesq.com

---

### Matter Info:

Matter Name: Litigation - NLRB and Federal Court

<u>Work Performed</u>	<u>Date</u>	<u>Rate</u>	<u>Time</u>	<u>Fee</u>
Revision and filing of answer to 2nd amended complaint	2/3/11	250.00	01:06	275.00
Preparation for and participation in Conference call with ALJ Rosenstein	2/4/11	250.00	01:36	400.00
Preparation of Exceptions and Brief	2/10/11	250.00	02:12	550.00
Draft of exceptions and brief in support	2/11/11	250.00	07:00	1,750.00
Preparation of exceptions and brief	2/13/11	250.00	04:30	1,125.00
Preparation of exceptions and brief	2/14/11	250.00	05:30	1,375.00

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**2525 S. TELEGRAPH**  
**SUITE 100**  
**BLOOMFIELD HILLS, MI 48302**

**MARK C. PIERCE**  
**EDWARD E. DUKE II**  
**M. CATHERINE FARRELL**  
**PAUL TAFELSKI**

**May 2011 Invoice**

**May 20, 2011      Meeting w clients re: Request by NLRB atty    2.3**

## David Franks, P.C.

20020 Harper Avenue  
Suite Ten  
Harper Woods, MI 48225  
(313) 825-0700

Invoice #: 1375  
8/30/11

Catherine Farrell  
Comau Employees Association  
catherine@farrellesq.com

---

### Matter Info:

Matter Name: Litigation - NLRB and Federal Court

<u>Work Performed</u>	<u>Date</u>	<u>Rate</u>	<u>Time</u>	<u>Fee</u>
Meeting with clients re information requested by NLRB Field Attorney; preparation of response	5/20/11	250.00	02:24	600.00
Draft of response to charge letter; telephone conference with Catherine et al	5/23/11	250.00	02:45	687.50
Review of most recent Board request for information	5/26/11	250.00	00:12	50.00

Exhibit 3

Law Offices

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**SUITE 100**  
**BLOOMFIELD HILLS, MI 48302**

**MARK C. PIERCE**  
**EDWARD E. DUKE II**  
**M. CATHERINE FARRELL**  
**PAUL TAFELSKI**

**Invoice of July 2012 for Submission of EAJA Petition**

July 17, 2012	Preparation of EAJA Application and drafting Supporting Brief MCF and DJF	10.0
July 23, 2012	continued research, drafting and editing EAJA Application and supporting Brief MCF and DJF	9.0
July 25, 2012	Final editing in preparation of submission of EAJA Application and supporting Brief MCF and DJF	12.0

Total Time 31.0 hours X \$250.00 = \$ 7,750.00

# CPI Inflation Calculator

\$

in

Has the same buying power as:

in

[About this calculator](#)

[Mobile Browser? View full screen.](#)

2010

# Economics of Law Practice in Michigan

The 2010 Desktop Reference on the Economics of Law Practice in Michigan



**SBM**  
STATE BAR OF MICHIGAN

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# Economics of Law Practice in Michigan

The 2010 Desktop Reference on the Economics of Law Practice in Michigan

March 2011

## Introduction

This State Bar of Michigan desktop reference provides current information on the economics of law practice. It is based on the October 2010 survey of the membership and can be downloaded online as a free service from the [SBM website—www.michbar.org](http://www.michbar.org).

The survey has two objectives:

- To provide timely, relevant and accurate information to inform and guide practical management and planning decisions by Michigan attorneys, including private- and non-private practitioners including the judiciary and government workers
- To monitor key trends within the legal profession, based on previous survey research and analysis

Similar studies were undertaken over the past three decades and included:

- Attorney demographics
- Attorney income by practice category, gender, field of law, office location, work status (full- versus part-time), years in practice and firm size
- Prevailing average hourly billing rates by practice class, firm size, field of practice, judicial circuit, county and office location
- Time allocated to billable and non-billable professional activities, including pro bono work
- Overhead expenses associated with maintaining a private practice by office location and firm size
- Law office management practices, and
- Perceptions regarding current and future economic circumstances related to law practice including law school indebtedness and charitable giving

## Methods and Measures

In late 2010, two online confidential survey instruments (“questionnaires”) were e-mailed to 29,475 attorneys, inviting participation by all active attorneys practicing within Michigan. The data obtained from approximately 3,775 usable returned questionnaires were tabulated and analyzed by the Applied Statistics Laboratory of Ann Arbor, Michigan and by Dr. James McComb, an independent consultant statistician.

Applied Statistics Laboratory provides legal economics survey research to bar associations nationwide, having fielded over 35 surveys in the last 30 years. Please contact Dr. Lawrence Stiffman for assistance at 734 369-6052 or [aslinfo@aol.com](mailto:aslinfo@aol.com). for no-charge technical assistance with questions surrounding this report.

To help practitioners interpret the information provided in the exhibits below, here is a brief discussion of measures of central tendency (median and mean) and dispersion (spread).

## Measures of Central Tendency

The mean (also called the average or arithmetic average) is calculated by adding the values of all responses, then dividing by the number of responses.

*Example:* three responses—1, 2 and 3—are reported. the average is calculated by adding their values ( $1 + 2 + 3 = 6$ ), then dividing by the number of responses (3). Thus, the average is  $6 \div 3 = 2$ .

The median is the middle value of a series (distribution) of values, which is initially rank-ordered (from low to high or vice versa). by definition, half the numbers are greater and half are less than the median. both mean and median values are used throughout this survey report to denote the measure of central tendency. Use of the median as a statistic for central tendency reduces the effect of “outliers” (extremely high or low values, such as 30), while the average does not.

*Example:* three responses—1, 2 and 30—are reported. Median is the middle number of the order of distribution (1, 2, 30) or 2. The average of this same the distribution is 33 divided by 3 = 11.

## Measures of Dispersion (Spread)

The dispersion of data around the median (the 50<sup>th</sup> percentile) is based on 3 values:

25<sup>th</sup> percentile (lower quartile). One-fourth of the values are less and three-fourths are more than this value.

75<sup>th</sup> percentile (upper quartile). Three-fourths of the values are less and one-fourth are more than this value.

95<sup>th</sup> percentile. Ninety-five percent of the values are less and five percent are more than this value.

## Geographic Areas Defined

The survey divided Michigan into geographic areas by greater metropolitan area and sub portions of Wayne, Oakland and Macomb counties as well as by judicial circuit for aggregation and reporting key statistics generated from the data.

## Interpreting Findings

Because the survey was conducted in October–November 2010, attorney income represents 2009 reported values, and estimates for 2010 were also requested. All other data represent 2010 values covering responses received in October–December, 2010. *Income* represents total personal income (after expenses) or salaries from the practice of law, before taxes, for 2009 and estimated for 2010. Bonus information was not addressed and may or may not have been included by respondents.

To denote gaps, such as the “gender gap” of reported income, the term “gap” is used on selected exhibits as a proportion calculated as the median value of one group divided by another. Hypothetically, a reported median income of \$85,000 for a group of female attorneys divided by \$100,000 for a like group of male attorneys yields the proportion of .85. This could be interpreted in plain English as this group (cohort) of females earns “85 cents on the dollar” compared against their male cohort.

Despite the use of the median to reduce the effect of extremely high or low values (“outliers”), as noted above, readers should use particular caution in interpreting data when only a small number of responses are available. In such cases, readers are advised to “group up” to a larger geographic area or practice category, where appropriate, in order not to distort reality. Generally, no value is represented if fewer than 5 responses were reported. In some instances, an exhibit may list fewer than 5 responses if the data were deemed important enough, with the understanding that the reader should use care when drawing inferences from such a small sample. Findings should be considered and used only in their entirety to avoid misconstruing the meaning of individual exhibits within this report.

# Comparison of the Population of Active Michigan Attorneys and Survey Respondents

## Comparison of All Active Michigan Resident Members and Survey Respondents <sup>1</sup>

	Total Members	Percent of Total Members	Total Respondents	Percent of Respondents
Private Practitioners	16,806	50.8%	2,572	68.1%
Non-Private Practitioners	16,257	49.2%	1,203	31.9%
Total	33,063	100.0%	3,775	100.0%

1. Private practitioners were more likely to respond to the survey than practitioners not in private practice. It is likely that private practitioners are more interested in hourly rate information.

## Active Michigan Residents in Private Practice and Survey Respondents by Geographic Region

Geographic Region	Universe of Private Practitioners	Percent of Total	Survey Respondents	Percent of Total
Southeast Michigan <sup>1</sup>	10,774	64.1%	1,541	60.0%
All Others in State	6,032	35.9%	1,031	40.0%
Total	16,806	100.0%	2,572	100.0%

1. Southeast Michigan includes Wayne, Oakland, Macomb, Washtenaw and Livingston

## Active Michigan Residents Not in Private Practice and Survey Respondents by Geographic Region

Geographic Region	Universe of Non-Private Practitioners	Percent of Total	Survey Responses	Percent of Total
Southeast Michigan <sup>1</sup>	9,957	61.2%	606	50.4%
All Others in State <sup>2</sup>	6,300	38.8%	597	49.6%
Total	16,257	100.0%	1,203	100.0%

1. Southeast Michigan includes Wayne, Oakland, Macomb, Washtenaw And Livingston

2. The universe of non private practitioners includes 1,721 active Michigan members not reporting an occupational area and 1,285 retired individuals

## Active All Michigan Residents in Private Practice and Survey Respondents in Private Practice by Gender

Gender	Universe of Private Practitioners	Percent of Total	Survey Respondents	Percent of Total
Male	12,489	74.3%	1,860	72.3%
Female	4,317	25.7%	712	27.7%
Total	16,806	100.0%	2,572	100.0%

## Active Michigan Residents Not in Private Practice and Survey Respondents Not in Private Practice by Gender

Gender	Universe of Non-Private Practitioners	Percent of Total	Survey Responses	Percent of Total
Male	10,125	62.3%	1,860	72.3%
Female	6,132	37.7%	712	27.7%
Total	16,257	100.0%	2,572	100.0%

# Characteristics of the Respondents

This section summarizes demographic characteristics of the survey respondents, including their practice class, gender, office location, work status (full- vs. part-time), years in practice and firm size (measured by number of attorneys).

## Practice Classification for Private Practitioners Responding to the Survey and Providing Data<sup>1</sup>

Practice Classification	Number	Percent
Sole Practitioner, Office Outside of Home	574	22.6%
Sole Practitioner, Working Out of Home Office	322	12.7%
Sole Practitioner, Sharing Space	153	6.0%
Managing Partner	173	6.8%

**Practice Classification for Private Practitioners Responding to the Survey and Providing Data<sup>1</sup>**

Practice Classification	Number	Percent
Equity Partner/Shareholder	618	24.3%
Non-Equity Partner	134	5.3%
Of Counsel	101	4.0%
Senior Associate	216	8.5%
Associate	233	9.2%
Arbitrator/Mediator	5	0.2%
Assigned Counsel	9	0.4%
Total	<b>2,538</b>	<b>100.0%</b>

1. Excludes unemployed individuals and individuals not providing data.

**Practice Classification for Non-Private Practitioners Responding to the Survey and Providing Data.**

Practice Classification	Number	Percent
In-House Counsel	317	25.7%
Legal Service Agency	81	6.6%
Local Government	160	13.0%
State Government	119	9.6%
Judge	120	9.7%
Other Judiciary	110	8.9%
Federal Government	66	5.3%
Academia	63	5.1%
Other Legal Work	85	6.9%
Retired, not Practicing Law or Unemployed	114	9.2%
Total	<b>1,235</b>	<b>100.0%</b>

**Private Practitioners and Non-Private Practitioners by Full or Part Time Work Status and Gender<sup>1</sup>**

Work Status	Private N	Private Percent	Non-Private N	Non-Private Percent
Female, Working Full-Time	574	22.3%	525	43.8%
Female, Working Part-Time	138	5.4%	53	4.4%
Male, Working Full-Time	1,621	63.0%	563	47.0%
Male, Working Part-Time	239	9.3%	57	4.8%
Total	<b>2,572</b>	<b>100.0%</b>	<b>1,198</b>	<b>100.0%</b>

1. Full time status is 30 or more hours per week.

**Private and Non-Private Survey Respondents by Office Location**

Office Location	Private	Private Percent	Non-Private N	Non-Private Percent
Downtown Detroit & New Center Area	200	7.8%	195	16.2%
Detroit, not Downtown	28	1.1%	13	1.1%
Remainder Wayne County	164	6.4%	48	4.0%
Oakland County (N. of M-59)	86	3.3%	65	5.4%
Southfield	149	5.8%	41	3.4%
Oakland County (S. of M59)	591	23.0%	111	9.2%
Mount Clemens Area	57	2.2%	21	1.7%
Remainder Macomb County	99	3.8%	29	2.4%
Ann Arbor Area	132	5.1%	71	5.9%
Livingston County	35	1.4%	12	1.0%
Battle Creek Area	21	0.8%	13	1.1%

### Private and Non-Private Survey Respondents by Office Location

Office Location	Private	Private Percent	Non-Private N	Non-Private Percent
Bay City/Midland/Saginaw Area	70	2.7%	48	4.0%
Flint Area	98	3.8%	19	1.6%
Grand Rapids Area	254	9.9%	94	7.8%
Jackson Area	40	1.6%	27	2.2%
Traverse City Area	72	2.8%	7	0.6%
Kalamazoo Area	62	2.4%	36	3.0%
Lansing Area	163	6.3%	222	18.5%
Muskegon/Mid-Michigan Area	53	2.1%	17	1.4%
Other Metro Areas	30	1.2%	25	2.1%
Out State, Lower Peninsula	130	5.1%	55	4.6%
Upper Peninsula	38	1.5%	34	2.8%
Total	2,572	100.0%	1203	100.0%

### Survey Respondents by Years in Practice

Years in Practice	Private N	Private Percent	Non-Private N	Non-Private Percent
Less Than 1	34	1.3%	0	0.0%
1 To 2	179	7.0%	87	7.2%
3 To 5	200	7.8%	99	8.2%
6 To 10	244	9.5%	140	11.6%
11 To 15	265	10.3%	167	13.8%
16 To 25	548	21.3%	299	24.7%
26 To 30	360	14.0%	181	14.9%
31 To 35	353	13.8%	145	12.0%
Over 35	384	15.0%	93	7.7%
Total	2567	100.0%	1211	100.0%

### Respondents in Private Practice by Firm Size

Firm Size	Number N	Percent
1	1,018	40.3%
2	236	9.3%
3	177	7.0%
4 To 6	335	13.3%
7 To 10	198	7.8%
11 To 15	177	7.0%
21 To 50	209	8.3%
Over 50	176	7.0%
Total	2,526	100.0%

### Billing Rates Private Practitioners

#### Hourly Billing Rates by Years in Practice for Private Practitioners

Years In Practice	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<1	29	\$125	\$150	\$154	\$190	\$200
1 to 2	158	150	163	174	200	275
3 to 5	186	150	175	189	200	310
6 to 10	229	163	200	205	240	300
11 to 15	254	175	211	232	265	400

### Hourly Billing Rates by Years in Practice for Private Practitioners

Years In Practice	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
16 to 25	523	185	228	255	300	450
26 to 30	339	180	233	248	300	425
31 to 35	335	185	233	253	300	450
>35	355	200	250	265	315	460
Total	<b>2,408</b>	<b>\$175</b>	<b>\$215</b>	<b>\$236</b>	<b>\$279</b>	<b>\$425</b>

### Hourly Billing Rates by Firm Size for Private Practitioners

Firm Size	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
1	949	\$150	\$200	\$203	\$250	\$350
2	224	175	214	227	253	375
3	161	175	220	226	250	350
4 to 6	312	175	225	248	294	450
7 to 10	188	175	222	233	259	400
11 to 20	173	200	260	287	350	450
21 to 50	203	192	270	276	338	460
>50	175	215	300	313	400	525
All Private Practitioners	<b>2,385</b>	<b>\$175</b>	<b>\$215</b>	<b>\$235</b>	<b>\$275</b>	<b>\$420</b>

### Hourly Billing Rates by Primary Office Location for Private Practitioners

Primary Office Location	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Downtown Detroit & New Center Area	190	\$200	\$255	\$290	\$375	\$525
Detroit, not Downtown	26	167	200	195	233	300
Remainder Wayne County	155	167	200	211	250	317
Oakland County (N. Of M-59)	80	161	225	251	289	542
Southfield	137	195	265	285	350	500
Oakland County (S. Of M59)	557	190	250	260	300	455
Mount Clemens Area	52	160	200	210	244	350
Remainder Macomb County	91	175	200	216	250	325
Ann Arbor Area	126	200	275	272	325	425
Livingston County	31	160	200	201	225	250
Battle Creek Area	21	160	200	184	225	250
Bay City/Midland/Saginaw Area	64	150	175	182	200	250
Flint Area	92	150	188	201	225	350
Grand Rapids Area	242	185	225	246	300	420
Jackson Area	38	150	175	190	200	300
Traverse City Area	68	152	190	193	209	325
Kalamazoo Area	56	167	210	213	260	350
Lansing Area	149	155	200	221	250	375
Muskegon/Mid-Michigan Area	53	150	195	197	225	367
Other Metro Areas	26	150	183	181	220	250
Out State, Lower Peninsula	123	150	180	189	208	287
Upper Peninsula	37	125	150	156	183	200

### Hourly Billing Rates by Primary Office Location for Private Practitioners

Primary Office Location	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Total	2,414	\$175	\$215	\$236	\$278	\$425

### Hourly Billing Rates by Field of Practice for Private Practitioners

Field of Practice	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Administrative Law	64	\$180	\$225	\$243	\$300	\$420
Alternative Dispute Resolution	70	200	250	261	325	390
Appellate Law	101	185	250	259	320	450
Auto (not Lemon) Law	56	150	300	358	450	900
Bankruptcy, Creditor	76	185	230	254	290	500
Bankruptcy, Debtor	136	175	200	209	250	300
Business Planning	297	200	250	246	275	390
Civil Rights	55	175	230	255	325	450
Collections, Creditor	126	155	195	198	245	300
Collections, Debtor	17	165	200	221	290	375
Condemnation Law	8	231	333	343	493	600
Construction Law	94	200	240	236	265	375
Consumer Law (including Lemon Law)	33	200	300	301	350	515
Criminal (Private Defendant)	233	150	200	203	250	325
Criminal (Public Defendant)	124	50	125	123	188	250
Employment Litigation (Defendant)	91	200	250	260	300	450
Employment Litigation (Plaintiff)	77	200	250	256	300	400
Environmental Law	48	200	253	281	350	460
Family Law	468	150	200	199	225	300
Foreclosure, Debtor	17	175	200	211	250	350
Foreclosure, Lender	32	175	195	210	248	295
General Practice	445	175	200	207	250	300
Health & Hospital Law	51	200	250	265	320	420
Immigration Law	34	195	200	221	250	365
Insurance Law	145	135	175	240	300	500
Intellectual Property/Trade Secrets	98	200	268	287	350	455
Labor Law (Defendant)	49	200	265	284	345	485
Labor Law (Plaintiff)	27	144	175	181	200	325
Landlord/Tenant (Commercial)	29	195	250	232	275	350
Landlord/Tenant (Residential)	49	150	175	175	200	250
Medical Malpractice (Plaintiff)	50	250	400	374	450	600
Medical Malpractice (Defendant)	50	140	150	155	170	210
Other Civil Law	375	195	250	262	300	455
Other Professional Liability	29	185	250	280	350	485
Personal Injury (Defendant)	115	135	150	166	180	250
Personal Injury (Plaintiff)	223	225	300	327	400	600
Probate, Administration, Decedent's Estates,						
Guardianship & Conservatorship	326	160	200	204	240	305
Probate Litigation, Decedent's Estates,						



### Hourly Billing Rates by Field of Practice for Private Practitioners

Field of Practice	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Guardianship & Conservatorship	109	190	220	224	250	320
Probate, Trust Administration	144	200	225	238	275	380
Probate, Trust Litigation	32	240	288	298	334	455
Product Liability	45	225	250	274	325	500
Public Benefits	19	175	200	230	250	500
Public Corporation Law (Including City & Village)	76	125	150	167	188	285
Real Estate	367	180	225	232	250	380
Securities Law	27	245	290	287	350	410
Tax Law	94	225	275	285	335	425
Workers' Compensation, Employee	31	150	200	203	250	350
Workers' Compensation, Employer	19	90	100	124	145	375
Total	5,281	\$175	\$205	\$233	\$275	\$410

### Hourly Billing Rate by County for Private Practitioners

County	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Allegan	35	180	200	231	250	420
Alpena	6	150	160	168	190	200
Antrim	17	150	185	184	200	300
Arenac	7	150	150	187	200	425
Barry	13	200	220	212	240	300
Bay	47	150	180	184	200	275
Benzie	12	170	185	178	220	240
Berrien	31	150	200	211	250	325
Branch	12	150	195	189	213	240
Calhoun	43	150	200	188	230	300
Cass	6	180	200	192	220	225
Charlevoix	7	200	200	211	225	275
Cheboygan	6	150	200	184	200	205
Chippewa	6	150	155	148	175	200
Clare	10	150	190	209	250	327
Clinton	40	150	200	214	250	350
Delta	9	150	175	173	185	225
Dickinson	6	125	138	150	175	200
Eaton	69	150	200	213	250	375
Emmet	13	180	200	215	270	350
Genesee	138	150	200	213	250	400
Gladwin	5	150	175	160	200	225
Grand Traverse	72	175	200	204	225	350
Gratiot	7	150	165	183	200	275
Houghton	8	110	150	133	163	200
Huron	6	175	178	198	185	295
Ingham	161	175	200	231	265	425
Ionia	10	150	163	175	200	250
Isabella	14	150	188	180	210	275
Jackson	57	150	200	222	250	350

### Hourly Billing Rate by County for Private Practitioners

County	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Kalamazoo	77	150	220	223	280	365
Kent	259	180	240	251	300	420
Lapeer	23	150	195	214	250	350
Leelanau	28	175	200	195	233	250
Lenawee	13	175	200	213	250	400
Livingston	75	150	200	209	250	350
Macomb	457	175	225	235	275	400
Manistee	11	150	185	170	195	225
Marquette	17	150	175	180	200	390
Mason	11	160	190	194	225	310
Mecosta	5	165	200	173	200	225
Menominee	6	125	175	192	200	350
Midland	23	175	200	200	235	250
Missaukee	5	175	180	182	190	200
Monroe	23	150	175	176	220	250
Montcalm	13	150	200	191	225	350
Montmorency	4	140	180	183	225	250
Muskegon	58	150	185	200	230	385
Newaygo	12	163	193	183	225	275
Oakland	993	185	250	254	300	450
Oceana	13	160	185	214	225	400
Ogemaw	6	125	150	149	150	200
Osceola	5	125	180	191	225	300
Otsego	6	175	208	209	250	290
Ottawa	141	175	220	231	265	405
Roscommon	6	150	150	188	175	350
Saginaw	59	150	175	192	225	365
Sanilac	20	178	205	204	238	300
Schoolcraft	12	150	195	191	223	280
St. Joseph	20	150	175	192	213	375
Tuscola	12	138	168	162	188	250
Van Buren	18	170	210	207	255	325
Washtenaw	193	200	250	261	300	440
Wayne	942	180	230	255	300	485
Wexford	8	180	188	195	200	250
Statewide	58	215	300	307	400	525
Total	<b>4,548</b>	<b>\$175</b>	<b>\$210</b>	<b>\$236</b>	<b>\$275</b>	<b>\$425</b>

Total includes counties that were not displayed that had fewer than five respondents

### Hourly Billing Rates by Circuit for Private Practitioners

Primary Circuit of Practice	Count	25th Percentile	Median	Mean	75th Percentile	95th Percentile
2 Berrien	31	\$150	\$200	\$211	\$250	\$325
3 Wayne	942	180	230	255	300	485
4 Jackson	57	150	200	222	250	350
5 Barry	13	200	220	212	240	300
6 Oakland	993	185	250	254	300	450
7 Genesee	138	150	200	213	250	400

### Hourly Billing Rates by Circuit for Private Practitioners

Primary Circuit of Practice	Count	25th Percentile	Median	Mean	75th Percentile	95th Percentile
8 Ionia, Montcalm	23	150	185	184	225	275
9 Kalamazoo	77	150	220	223	280	365
10 Saginaw	59	150	175	192	225	365
11 Alger, Luce, Mackinac, Schoolcraft	16	150	195	194	238	280
12 Baraga, Houghton, Keweenaw	11	55	150	117	150	200
13 Antrim, Grand Traverse, Leelanau	117	175	200	199	225	300
14 Muskegon	58	150	185	200	230	385
15 Branch	12	150	195	189	213	240
16 Macomb	457	175	225	235	275	400
17 Kent	259	180	240	251	300	420
18 Bay	47	150	180	184	200	275
19 Benzie, Manistee	23	160	185	175	210	225
20 Ottawa	141	175	220	231	265	405
21 Isabella	14	150	188	180	210	275
22 Washtenaw	193	200	250	261	300	440
23 Alcona, Arenac, Iosco, Oscoda	21	150	175	194	200	300
24 Sanilac	20	178	205	204	238	300
25 Marquette	17	150	175	180	200	390
26 Alpena, Montmorency	10	150	160	174	200	250
27 Newaygo, Oceana	25	160	185	199	225	300
28 Missaukee, Wexford	13	180	185	190	200	250
29 Clinton, Gratiot	47	150	195	210	250	350
30 Ingham	161	175	200	231	265	425
32 Gogebic, Ontonagon	5	90	100	82	100	100
33 Charlevoix	7	200	200	211	225	275
34 Ogemaw, Roscommon	12	150	150	168	163	350
36 Van Buren	18	170	210	207	255	325
37 Calhoun	43	150	200	188	230	300
38 Monroe	23	150	175	176	220	250
39 Lenawee	13	175	200	213	250	400
40 Lapeer	33	150	195	204	250	350
41 Dickinson, Iron, Menominee	14	125	150	166	175	350
42 Midland	23	175	200	200	235	250
43 Cass	6	180	200	192	220	225
44 Livingston	75	150	200	209	250	350
45 St. Joseph	20	150	175	192	213	375
46 Crawford, Kalkaska, Otsego	6	120	175	158	200	225
47 Delta	9	150	175	173	185	225
48 Allegan	35	180	200	231	250	420
50 Chippewa	6	150	155	148	175	200
51 Lake, Mason	14	160	193	194	225	310
52 Huron	6	175	178	198	185	295
53 Cheboygan, Presque Isle	7	150	200	186	200	205
54 Tuscola	12	138	168	162	188	250

### Hourly Billing Rates by Circuit for Private Practitioners

Primary Circuit of Practice	Count	25th Percentile	Median	Mean	75th Percentile	95th Percentile
55 Clare, Gladwin	15	150	180	193	250	327
56 Eaton	69	150	200	213	250	375
57 Emmet	13	180	200	215	270	350
84 Statewide Practice	58	215	300	307	400	525
Total	<b>4,548</b>	<b>\$175</b>	<b>\$210</b>	<b>\$236</b>	<b>\$275</b>	<b>\$425</b>

Total includes circuits that were not displayed that had fewer than 5 respondents

## Attorney Income in 2009 and 2010

This section summarizes attorney income from the practice of law for calendar year 2009 and estimates for 2010. Information is arrayed by practice category or class, income group, gender and work status, field of law and firm size.

For 2010, median income reported by all respondents (working part- and full-time) is estimated at \$84,000. mean (average) income for all respondents (part- and full-time) is \$122,271. This is a decrease in reported incomes for 2009 (\$85,000 for median values and \$129,476 for average values.)

### 2010 Estimated Income for Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Sole Practitioner, Office Outside of Home	488	\$35,000	\$65,000	\$91,860	\$110,000	\$250,000
Sole Practitioner, Working Out of Home Office	269	11,500	30,000	44,789	60,000	125,000
Sole Practitioner Sharing Space	133	30,000	55,000	77,807	90,000	240,000
Managing Partner	148	80,000	155,000	263,969	300,000	800,000
Equity Partner/Shareholder	524	91,000	149,000	193,792	250,000	475,000
Non-Equity Partner	118	95,000	135,000	156,975	200,000	370,000
Of Counsel	87	50,000	95,000	103,676	130,000	250,000
Senior Associate	194	54,000	76,000	87,059	100,000	170,000
Associate	208	50,000	71,000	75,439	100,000	125,000
Assigned Counsel	8	0	27,500	34,750	54,000	115,000
All Private Practitioners	<b>2,199</b>	<b>\$45,000</b>	<b>\$84,000</b>	<b>\$122,271</b>	<b>\$145,000</b>	<b>\$360,000</b>

\*Total includes categories not displayed due to insufficient number reporting within a single category

### 2009 Income for Private Practitioners by Practice Classification

Practice Classification	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Sole Practitioner, Office Out-side of Home	486	\$35,000	\$70,000	\$92,863	\$120,000	\$250,000
Sole Practitioner, Working Out of Home Office	266	9,000	30,000	48,229	60,000	150,000
Sole Practitioner Sharing Space	133	30,000	60,000	76,716	100,000	200,000
Managing Partner	150	80,000	150,000	367,260	268,000	750,000
Equity Partner/Shareholder	532	90,500	148,500	193,961	250,000	500,000
Non-Equity Partner	119	90,000	135,000	153,895	185,000	350,000
Of Counsel	90	55,000	94,500	108,747	129,000	260,000
Senior Associate	196	50,000	74,000	79,051	100,000	155,000
Associate	202	42,000	70,000	69,260	98,000	125,000

**2009 Income for Private Practitioners by Practice Classification**

Practice Classification	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Assigned Counsel	7	0	45,000	41,857	60,000	115,000
Unemployed, Looking for Work	8	0	1000	13750	23000	62000
Unemployed, Looking for Non-Legal Work	5	600	15000	29120	60000	70000
Unemployed, Looking for Legal or Non-Legal Work	5	0	0	18200	0	91000
All Private Practitioners	<b>2,203</b>	<b>\$45,000</b>	<b>\$85,000</b>	<b>\$129,476</b>	<b>\$150,000</b>	<b>\$355,000</b>

**Estimated 2010 Attorney Income by Practice Class, Michigan Non-Private Practitioners**

Income by Practice Class	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
In House Counsel (for-Profit Org.)	185	\$86,000	\$126,000	\$140,464	\$176,000	\$298,333
In-House Counsel (Family or Closely Held Business)	29	75,000	100,000	122,383	170,000	275,000
Legal Service Agency	81	45,000	54,000	60,481	70,000	97,000
In-House Counsel (Not-for-Profit Org.)	79	75,000	105,000	105,807	125,000	197,000
City Agency	18	68,000	87,700	88,869	115,000	121,613
County Agency	41	62,500	88,000	81,252	102,000	118,000
State Agency	114	79,000	93,500	91,283	105,000	125,000
County Prosecutor	18	80,000	83,500	87,972	110,000	130,000
County Assistant Prosecutor	65	52,600	64,000	70,017	84,000	120,000
Public Defender	12	55,500	76,500	80,700	99,000	150,000
Judge-State	57	138,000	139,000	127,867	139,919	150,000
Judge-Federal	9	147,000	160,000	152,920	160,080	176,000
Administrative Law Judge/Referee	58	70,000	85,000	83,294	93,000	130,000
Law Clerk	45	45,000	60,000	65,262	76,000	130,000
Court Clerk	6	42,000	70,000	82,500	136,000	150,000
Non Clerk Attorney In Court System	55	62,000	75,000	79,231	95,500	134,000
Federal Prosecutor	12	122,500	142,500	136,667	153,000	160,000
Other Federal Agency	40	63,601	84,000	88,701	115,811	147,500
Academia/Professor of Law	59	65,000	85,000	103,644	140,000	225,000
Lobbyist/Trade Assoc., Government Relations	9	70,000	100,000	129,553	130,000	400,000
Management/Non Legal	38	79,700	108,500	121,181	150,000	272,000
Non-Profit Organization, Not Law Related	17	45,000	65,000	69,041	105,000	122,000
Not Practicing Law but Working	60	55,000	73,000	103,087	98,000	275,000
Retired	6	55,000	77,500	83,500	116,000	120,000
Other	11	10,000	22,000	25,045	36,000	60,000
All Non-Private Practitioners	<b>1,130</b>	<b>\$62,000</b>	<b>\$88,000</b>	<b>\$99,125</b>	<b>\$123,000</b>	<b>\$200,000</b>

\*Total includes categories not displayed due to insufficient number reporting within a single category

**2009 Attorney Income by Practice Category, Michigan Non-Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
In House Counsel (for-Profit Org.)	182	\$85,000	\$121,500	\$136,587	\$170,000	\$255,000
In-House Counsel (Family or Closely Held Business)	28	73,500	102,500	120,603	147,500	250,000
Legal Service Agency	80	42,500	52,000	58,278	70,782	102,000
In-House Counsel (Not-for-Profit Org.)	79	80,000	105,000	102,464	120,000	194,000
City Agency	18	65,000	92,500	89,565	115,000	121,000
County Agency	40	60,000	85,000	81,936	104,500	125,500
State Agency	112	79,000	94,550	91,062	104,000	125,000
County Prosecutor	18	78,000	82,500	87,139	115,000	125,000
County Assistant Prosecutor	62	51,000	63,250	68,541	80,000	120,000
Public Defender	12	65,000	80,000	89,583	122,500	154,000
Judge-State	58	136,000	138,272	142,210	139,919	150,000
Judge-Federal	9	135,000	160,000	148,709	160,080	176,000
Administrative Law Judge/Referee	58	70,000	85,000	82,494	95,000	120,000
Law Clerk	45	45,000	57,773	66,417	75,000	130,000
Court Clerk	6	42,000	67,500	81,991	136,000	150,000
Non Clerk Attorney In Court System	51	65,000	75,000	80,500	100,000	131,000
Federal Prosecutor	11	115,000	130,000	132,000	150,000	157,000
Other Federal Agency	39	62,000	85,000	85,845	109,284	141,000
Academia/Professor Of Law	59	65,000	85,000	96,610	125,000	185,000
Lobbyist/Trade Assoc./Gov. Relations	9	60,000	96,708	117,079	128,000	350,000
Management/Non Local	38	70,000	104,000	120,199	145,000	258,000
Non-Profit Organization, Not Law Related	17	38,600	60,000	67,859	103,000	120,000
Not Practicing Law but Working	55	58,000	74,000	91,273	96,000	200,000
Retired	5	84,000	89,000	99,600	110,000	160,000
Unemployed, Looking for Work	6	25,000	37,500	36,500	40,000	74,000
Other	12	21,000	43,500	45,072	57,376	120,000
All Non-Private Practitioners	<b>1,111</b>	<b>\$62,000</b>	<b>\$88,000</b>	<b>\$97,803</b>	<b>\$120,000</b>	<b>\$189,000</b>

\*Total includes categories not displayed due to insufficient number reporting within a single category

**2010 Attorney Income by Work Status and Gender, Michigan Private and Non-Private Practitioners**

Private Practitioners	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Female, Working Full-Time	487	\$48,000	\$75,000	\$94,315	\$110,000	\$250,000
Female, Working Part-Time	117	5,000	20,000	33,253	40,000	95,000
Male, Working Full-Time	1,411	60,000	100,000	147,967	180,000	400,000
Male, Working Part-Time	199	7,500	30,000	53,467	70,000	180,000
All Private Practitioners	<b>2,214</b>	<b>\$45,000</b>	<b>\$82,000</b>	<b>\$121,610</b>	<b>\$142,000</b>	<b>\$350,000</b>
Non-Private Practitioners	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Female, Working Full-Time	500	\$60,000	\$80,000	\$91,175	\$110,000	\$173,800
Female, Working Part-Time	45	15,000	25,000	39,456	60,000	92,000
Male, Working Full-Time	535	73,000	100,000	112,143	138,000	210,000
Male, Working Part-Time	46	52,600	86,800	81,981	110,000	156,000
All Non-Private Practitioners	<b>1,126</b>	<b>\$62,000</b>	<b>\$88,000</b>	<b>\$98,695</b>	<b>\$123,000</b>	<b>\$197,000</b>

### Median Income by Years in Practice and Practice Classification for Private Practitioners

	1 to 2	3 to 5	6 to 10	11 to 15	16 to 25	26-30	31-35	>35
Sole Practitioner, Office Outside of Home	\$18,000	\$35,000	\$28,500	\$70,000	\$72,500	\$80,000	75,000	75,000
Sole Practitioner, Working Out of Home Office	11,500	20,000	20,000	27,500	40,000	30,000	55,000	45,000
Sole Practitioner Sharing Space	20,000	32,500	42,000	30,000	75,000	75,000	75,000	70,000
Managing Partner	22,000	350,000	65,000	97,500	160,000	160,000	175,000	210,000
Equity Partner/Shareholder	90,000	77,500	88,500	115,000	162,500	200,000	190,000	130,000
Non-Equity Partner	.	147,500	120,000	175,000	165,000	125,000	113,500	75,000
Of Counsel	51,000	70,000	90,000	102,500	95,000	115,000	68,500	90,000
Senior Associate	52,000	65,000	80,000	97,500	86,000	92,500	107,500	85,000
Associate	50,000	75,000	77,000	79,500	75,000	80,000	105,000	85,000
Total	<b>\$44,000</b>	<b>\$55,000</b>	<b>\$70,000</b>	<b>\$91,000</b>	<b>\$100,000</b>	<b>\$110,000</b>	<b>\$100,000</b>	<b>\$85,000</b>

### Median Income by Years in Practice and Practice Classification for Non-Private Practitioners

Practice Category	1 to 2	3 to 5	6 to 10	11 to 15	16 to 25	26-30	31-35	>35
In House Counsel (for-Profit Org.)	\$54,500	\$87,000	\$120,000	\$102,500	\$145,000	\$139,500	\$190,000	\$157,096
In-House Counsel (Family or Closely Held Business)			95,500		100,000			.
Legal Service Agency	40,000	44,000	53,917	56,104	69,563	71,000	75,000	
In-House Counsel (Not-for-Profit Org.)		77,500	110,000	111,000	111,000	111,625	120,500	
City Agency				.	106,500		114,250	.
County Agency	.			78,000	86,500	90,000		
State Agency	65,000	65,000	80,500	87,000	95,000	100,000	104,000	122,000
County Assistant Prosecutor		53,412		61,000	90,000	75,000	84,000	.
Public Defender		.			80,000			.
Judge-State		.			139,919	139,400	139,000	138,200
Administrative Law Judge/Referee				84,000	87,250	86,550	88,000	101,000
Law Clerk	43,000	52,000			75,750	69,000	.	
Non Clerk Attorney In Court System		67,000	46,000	77,500	95,000	78,000	66,000	99,000
Federal Prosecutor	.	.					150,000	.
Other Federal Agency	57,000	69,000	73,000		93,000	126,000	137,000	.
Academia/Professor of Law			79,000	68,500	88,000	105,500	140,000	85,000
Non-Profit Organization, Not Law Related		.	.		45,000			
Not Practicing Law but Working		52,000	70,000	72,000	75,000	93,000	62,000	
Retired	.	.	.	.		77,500	55,000	116,000
All Non-Private Practitioners	<b>\$52,000</b>	<b>\$60,000</b>	<b>\$77,661</b>	<b>\$85,000</b>	<b>\$96,500</b>	<b>\$100,625</b>	<b>\$111,357</b>	<b>\$116,500</b>

### Full- and Part-Time Private Practitioners Income by Years in Practice

Years in Practice	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Less Than 1	31	\$5,000	\$20,000	\$33,120	\$50,000	\$101,000
1 To 2	165	\$20,000	\$42,000	\$48,647	\$65,000	\$115,000
3 To 5	180	\$36,000	\$55,000	\$64,799	\$86,500	\$125,500
6 To 10	218	\$39,000	\$69,000	\$76,826	\$100,000	\$170,000

### Full- and Part-Time Private Practitioners Income by Years in Practice

Years in Practice	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
11 To 15	235	\$50,000	\$90,000	\$106,703	\$140,000	\$280,000
16 To 25	461	\$60,000	\$100,000	\$161,946	\$180,000	\$425,000
26 To 30	311	\$60,000	\$110,000	\$151,830	\$200,000	\$415,000
31 To 35	285	\$60,000	\$100,000	\$160,040	\$200,000	\$450,000
Over 35	325	\$45,000	\$85,000	\$119,113	\$150,000	\$350,000
Total	2211	\$45,000	\$82,000	\$121,547	\$142,500	\$350,000

### Full-Time Only Private Practitioners Income by Years in Practice

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
less than 1	22	\$16,500	\$40,000	\$44,775	\$60,000	\$101,000
1 to 2	137	\$30,000	\$48,000	\$56,424	\$75,000	\$120,000
3 to 5	157	\$45,000	\$60,000	\$70,445	\$93,000	\$126,000
6 to 10	188	\$50,000	\$75,000	\$84,660	\$107,000	\$175,000
11 to 15	203	\$56,000	\$100,000	\$115,135	\$150,000	\$300,000
16 to 25	411	\$70,000	\$110,000	\$172,474	\$190,000	\$430,000
26 to 30	273	\$70,000	\$120,000	\$164,209	\$220,000	\$450,000
31 to 35	250	\$65,000	\$115,000	\$174,242	\$220,000	\$475,000
over 35	243	\$70,000	\$100,000	\$142,010	\$200,000	\$400,000
Total	1884	\$52,000	\$90,000	\$134,208	\$150,000	\$400,000

### Part-Time Only Private Practitioners Income by Years in Practice, 2010

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
less than 1	9	\$500	\$4,000	\$4,631	\$8,500	\$12,000
1 to 2	28	\$2,000	\$5,000	\$10,596	\$18,000	\$35,000
3 to 5	21	\$8,000	\$10,000	\$25,667	\$40,000	\$70,000
6 to 10	29	\$5,500	\$20,000	\$26,621	\$35,000	\$110,000
11 to 15	31	\$20,000	\$35,000	\$48,475	\$75,000	\$171,000
16 to 25	47	\$7,000	\$30,000	\$77,006	\$75,000	\$200,000
26 to 30	38	\$16,000	\$32,500	\$62,900	\$70,000	\$275,000
31 to 35	32	\$12,000	\$42,500	\$56,429	\$88,500	\$150,000
over 35	79	\$10,000	30000	\$43,713	\$70,000	\$130,000
Total	314	\$6,000	25000	\$45,926	\$60,000	\$160,000

### Non-Private Practitioners 2010 Median Income by Years in Practice and Gender

	Female		Male	
	N	Median	N	Median
1 to 2	48	\$50,500	37	\$52,000
3 to 5	53	\$52,754	39	\$76,000
6 to 10	77	\$75,000	56	\$85,500
11 to 15	95	\$76,000	66	\$95,000
16 to 25	150	\$90,000	127	\$103,000
26 to 30	62	\$90,000	96	\$110,000
31 to 35	35	\$110,000	92	\$113,607
>35	3	\$91,500	59	\$119,000
All Attorneys	523	\$78,000	572	\$100,000



### Private and Non-Private Practitioners 2010 Median Income by Years in Practice and Gender

	Female Private Practitioners	Female Non-Private Practitioners	Male Private Practitioners	Male Non-Private Practitioners
	Median	Median	Median	Median
1 to 2	\$40,000	\$50,500	\$45,000	\$52,000
3 to 5	\$52,000	\$52,754	\$60,000	\$76,000
6 to 10	\$65,000	\$75,000	\$71,000	\$85,500
11 to 15	\$76,721	\$76,000	\$105,000	\$95,000
16 to 25	\$80,000	\$90,000	\$120,000	\$103,000
26 to 30	\$75,000	\$90,000	\$120,000	\$110,000
31 to 35	\$75,000	\$110,000	\$110,000	\$113,607
>35	\$56,500	\$91,500	\$85,000	\$119,000
All Attorneys	\$60,000	\$78,000	\$90,000	\$100,000

### 2010 Attorney Income by Primary Field of Law, Michigan Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Administrative Law	26	\$65,000	\$115,000	\$145,077	\$200,000	\$320,000
Alternative Dispute Resolution	19	\$15,000	\$50,000	\$119,921	\$200,000	\$400,000
Appellate Law	37	\$75,000	\$95,000	\$126,986	\$125,000	\$360,000
Auto (not Lemon) Law	18	\$85,000	\$112,500	\$193,000	\$200,000	\$750,000
Bankruptcy, Creditor	25	\$80,000	\$130,000	\$222,361	\$250,000	\$750,000
Bankruptcy, Debtor	82	\$30,000	\$50,000	\$92,628	\$75,000	\$205,000
Business Planning	103	\$80,000	\$110,000	\$132,341	\$180,000	\$280,000
Civil Rights	15	\$45,000	\$75,000	\$85,867	\$100,000	\$250,000
Collections, Creditor	42	\$55,000	\$99,000	\$118,027	\$175,000	\$260,000
Construction Law	36	\$75,000	\$123,500	\$180,683	\$180,000	\$700,000
Consumer Law (including Lemon Law)	17	\$50,000	\$70,000	\$113,482	\$115,000	\$450,000
Criminal (Private Defendant)	89	\$27,000	\$55,000	\$77,281	\$100,000	\$225,000
Criminal (Public Defendant)	71	\$10,000	\$30,000	\$34,269	\$45,000	\$95,000
Employment Litigation (Defendant)	30	\$106,000	\$180,000	\$201,717	\$285,000	\$460,000
Employment Litigation (Plaintiff)	38	\$50,000	\$75,000	\$96,579	\$130,000	\$250,000
Environmental Law	24	\$37,500	\$108,000	\$153,250	\$200,000	\$500,000
Family Law	240	\$28,500	\$50,000	\$71,626	\$85,000	\$190,000
Foreclosure, Lender	14	\$70,000	\$96,000	\$93,786	\$110,000	\$155,000
General Practice	184	\$35,500	\$60,000	\$73,490	\$92,500	\$210,000
Health & Hospital Law	17	\$80,000	\$130,000	\$162,588	\$200,000	\$500,000
Immigration Law	21	\$25,000	\$50,000	\$115,217	\$93,000	\$365,000
Insurance Law	53	\$71,000	\$93,000	\$127,575	\$150,000	\$339,000
Intellectual Property/Trade Secrets	66	\$75,000	\$122,500	\$165,106	\$250,000	\$415,000
Labor Law (Defendant)	17	\$110,000	\$240,000	\$219,941	\$300,000	\$400,000
Labor Law (Plaintiff)	17	\$50,000	\$85,000	\$133,471	\$171,000	\$400,000
Landlord/Tenant (Commercial)	6	\$88,000	\$95,000	\$111,083	\$135,000	\$250,000
Landlord/Tenant (Residential)	9	\$20,000	\$45,000	\$42,111	\$60,000	\$95,000
Medical Malpractice (Plaintiff)	25	\$65,000	\$120,000	\$202,200	\$250,000	\$750,000
Medical Malpractice (Defendant)	25	\$75,000	\$100,000	\$138,200	\$160,000	\$350,000
Other Civil Law	149	\$75,000	\$125,000	\$167,562	\$200,000	\$410,000

**2010 Attorney Income by Primary Field of Law, Michigan Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Other Professional Liability	9	\$67,000	\$100,000	\$181,111	\$250,000	\$460,000
Personal Injury (Defendant)	56	\$66,250	\$85,500	\$124,792	\$150,000	\$430,000
Personal Injury (Plaintiff)	107	\$70,000	\$135,000	\$221,008	\$240,000	\$600,000
Probate, Administration, Decedent's Estates, Guardianship & Conservatorship.	129	\$33,000	\$65,000	\$80,522	\$95,000	\$250,000
Probate Litigation, Decedent's Estates, Guardianship & Conservatorship.	31	\$50,000	\$69,000	\$102,335	\$140,000	\$325,000
Probate, Trust Administration	51	\$45,000	\$65,000	\$108,826	\$100,000	\$200,000
Probate, Trust Litigation	5	\$150,000	\$175,000	\$259,000	\$400,000	\$450,000
Product Liability	20	\$95,000	\$136,250	\$203,125	\$202,500	\$612,500
Public Benefits	9	\$50,000	\$85,000	\$172,556	\$270,000	\$650,000
Public Corporation Law ( Including City, Municipal And Village)	32	\$62,500	\$100,000	\$125,969	\$170,000	\$300,000
Real Estate	136	\$45,000	\$85,000	\$113,631	\$135,000	\$310,000
Securities Law	6	\$97,500	\$137,500	\$191,250	\$200,000	\$500,000
Tax Law	39	\$50,000	\$100,000	\$141,615	\$180,000	\$400,000
Workers' Compensation, Employee	22	\$65,000	\$100,000	\$142,843	\$135,000	\$300,000
Workers' Compensation, Employer	10	\$72,000	\$97,500	\$102,400	\$140,000	\$150,000
Total	2182	\$45,000	\$80,000	\$120,492	\$140,000	\$350,000

**Full- and Part-Time Attorney Income by Firm Size**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
1	868	\$24,750	\$50,000	\$69,394	\$87,500	\$215,000
2	203	\$40,000	\$70,000	\$114,285	\$120,000	\$340,000
3	164	\$50,000	\$85,000	\$124,761	\$127,500	\$325,000
4 to 6	292	\$65,000	\$99,000	\$141,838	\$160,000	\$420,000
7 to 10	173	\$65,000	\$100,000	\$135,640	\$165,000	\$400,000
11 to 20	155	\$90,000	\$140,000	\$200,100	\$230,000	\$450,000
21 to 50	171	\$97,500	\$140,000	\$192,354	\$240,000	\$490,000
over 50	153	\$105,000	\$140,000	\$201,615	\$275,000	\$460,000
Total	2,179	\$45,000	\$81,000	\$120,942	\$141,000	\$350,000

**Full-Time Only Attorney Income by Firm Size**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
1	639	\$35,000	\$60,000	\$82,618	\$100,000	\$240,000
2	182	\$45,000	\$71,000	\$115,618	\$120,000	\$340,000
3	150	\$50,000	\$85,000	\$128,379	\$125,000	\$350,000
4 to 6	280	\$65,000	\$100,000	\$144,421	\$172,500	\$425,000
7 to 10	160	\$67,250	\$104,500	\$138,823	\$170,000	\$375,000
11 to 20	146	\$95,000	\$141,000	\$208,627	\$230,000	\$450,000
21 to 50	159	\$100,000	\$150,000	\$201,236	\$250,000	\$500,000
over 50	145	\$106,000	\$148,000	\$206,518	\$280,000	\$460,000
Total	1,861	\$52,000	\$90,000	\$133,339	\$150,000	\$400,000

### Part-Time Only Attorney Income by Firm Size

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
1	224	\$5,000	\$20,000	\$31,273	\$40,000	\$110,000
2	21	\$18,000	\$35,000	\$102,733	\$80,000	\$190,000
3	14	\$40,000	\$80,000	\$86,000	\$130,000	\$200,000
4 to 6	12	\$32,500	\$60,000	\$81,583	\$95,000	\$300,000
7 to 10	9	\$8,500	\$18,000	\$38,233	\$60,000	\$125,000
11 to 20	9	\$30,000	\$45,000	\$61,778	\$80,000	\$171,000
21 to 50	12	\$50,000	\$62,500	\$74,667	\$90,500	\$200,000
over 50	7	\$45,000	\$82,000	\$120,286	\$200,000	\$350,000
Total	308	\$6,500	\$25,000	\$45,401	\$60,000	\$150,000

## Law Practice Management

This section summarizes a variety of practice management issues. Topics include hours worked in the average workweek, annual pro bono hours provided, uncollectables and service charge policies, changes in billing rates over time, recent client behaviors related to rates and charges, office overhead rates, staffing ratios and economic planning issues and office management decisions likely to be considered in 2011.

### Hours Worked in the Average 2010 Workweek

#### Hours Worked Per Week by Private Practice Attorneys and Function

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Hours/Week At An Hourly Rate	2,197	10	25	32	35	50
Hours/Week At A Fixed Rate	1,672	0	5	11	15	35
Hours/Week On Contingency	1,546	0	1	62	10	50
Hours/Week On Administration	2,111	2	5	6	10	15
Hours/Week Marketing	1,769	1	2	4	5	10
Hours/Week Non Legal Service	1,715	1	2	4	5	10
Hours/Week Non Legal Emp.	1,066	0	0	4	1	25
<b>Total Compensable Hours /Week</b>	<b>2,047</b>	<b>27</b>	<b>35</b>	<b>35</b>	<b>44</b>	<b>55</b>
<b>Total Hours/Week Worked</b>	<b>2,147</b>	<b>40</b>	<b>49</b>	<b>50</b>	<b>55</b>	<b>70</b>
<b>Pro Bono Hours Per Year</b>	<b>1,535</b>	<b>10</b>	<b>25</b>	<b>47</b>	<b>50</b>	<b>150</b>

#### Hours Worked Per Week by Non-Private Practice Attorneys and Function

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Unbilled Non Legal Public Service	542	2	5	11	10	42
Total Hours/Week Worked	1,088	40	45	44	50	60
Pro Bono Hours Per Year	258	10	20	121	50	500

#### Likelihood of Increasing CLE Participation for Private Practitioners by Practice Classification

	Very Likely	Likely	Unlikely	Not Applicable	Do Not Know	Total
Sole Practitioner, Office Outside of Home	16 3.4%	119 25.2%	244 51.7%	55 11.7%	38 8.1%	<b>472</b> <b>100.0%</b>
Sole Practitioner, Working Out Of Home Office	17 6.2%	85 30.8%	118 42.8%	43 15.6%	13 4.7%	<b>276</b> <b>100.0%</b>
Sole Practitioner Sharing Space	7 5.4%	29 22.5%	77 59.7%	13 10.1%	3 2.3%	<b>129</b> <b>100.0%</b>
Managing Partner	6 7.1%	21 24.7%	48 56.5%	6 7.1%	4 4.7%	<b>85</b> <b>100.0%</b>

### Likelihood of Increasing CLE Participation for Private Practitioners by Practice Classification

		Very Likely	Likely	Unlikely	Not Applicable	Do Not Know	Total
Equity Partner/Shareholder		6	26	97	11	15	155
		3.9%	16.8%	62.6%	7.1%	9.7%	100.0%
Non-Equity Partner		0	4	6	2	1	13
		.0%	30.8%	46.2%	15.4%	7.7%	100.0%
Of Counsel		1	3	13	0	4	21
		4.8%	14.3%	61.9%	.0%	19.0%	100.0%
Senior Associate		1	5	17	7	11	41
		2.4%	12.2%	41.5%	17.1%	26.8%	100.0%
Associate		1	7	15	6	11	40
		2.5%	17.5%	37.5%	15.0%	27.5%	100.0%
Arbitrator or Mediator		0	0	3	0	1	4
		.0%	.0%	75.0%	.0%	25.0%	100.0%
Assigned Counsel		0	1	1	1	1	4
		.0%	25.0%	25.0%	25.0%	25.0%	100.0%
Unemployed, Looking for Work		0	1	2	0	1	4
		.0%	25.0%	50.0%	.0%	25.0%	100.0%
Unemployed, Looking for Non-Legal Work		1	0	1	0	1	3
		33.3%	.0%	33.3%	.0%	33.3%	100.0%
Unemployed, Looking for Legal or Non-Legal Work		0	1	1	2	2	6
		.0%	16.7%	16.7%	33.3%	33.3%	100.0%
Total		56	302	643	146	106	1253
		4.5%	24.1%	51.3%	11.7%	8.5%	100.0%

### Likelihood of Decreasing CLE Participation for Private Practitioners by Practice Classification

		Very Likely	Likely	Unlikely	Not Applicable	Do Not Know	Total
Sole Practitioner, Office Outside of Home	n	15	44	330	68	35	492
	%	3.0%	8.9%	67.1%	13.8%	7.1%	100.0%
Sole Practitioner, Working Out of Home Office	n	16	23	172	50	14	275
	%	5.8%	8.4%	62.5%	18.2%	5.1%	100.0%
Sole Practitioner Sharing Space	n	3	16	87	16	5	127
	%	2.4%	12.6%	68.5%	12.6%	3.9%	100.0%
Managing Partner	n	4	7	62	8	7	88
	%	4.5%	8.0%	70.5%	9.1%	8.0%	100.0%
Equity Partner/Shareholder	n	4	19	111	10	13	157
	%	2.5%	12.1%	70.7%	6.4%	8.3%	100.0%
Non-Equity Partner	n	0	1	10	2	1	14
	%	.0%	7.1%	71.4%	14.3%	7.1%	100.0%
Of Counsel	n	1	4	12	1	3	21
	%	4.8%	19.0%	57.1%	4.8%	14.3%	100.0%
Senior Associate	n	0	3	22	5	10	40
	%	.0%	7.5%	55.0%	12.5%	25.0%	100.0%
Associate	n	2	1	22	4	13	42
	%	4.8%	2.4%	52.4%	9.5%	31.0%	100.0%
Arbitrator/Mediator	n	0	0	3	0	1	4
	%	.0%	.0%	75.0%	.0%	25.0%	100.0%
Assigned Counsel	n	0	0	2	1	1	4
	%	.0%	.0%	50.0%	25.0%	25.0%	100.0%

### Likelihood of Decreasing CLE Participation for Private Practitioners by Practice Classification

		Very Likely	Likely	Unlikely	Not Applicable	Do Not Know	Total
Unemployed, Looking for Work	n	0	1	1	1	1	4
	%	.0%	25.0%	25.0%	25.0%	25.0%	100.0%
Unemployed, Looking for Non-Legal Work	n	1	0	1	0	1	3
	%	33.3%	.0%	33.3%	.0%	33.3%	100.0%
Unemployed, Looking for Legal or Non-Legal Work	n	1	1	1	1	2	6
	%	16.7%	16.7%	16.7%	16.7%	33.3%	100.0%
Total	n	47	120	836	167	107	1277
	%	3.7%	9.4%	65.5%	13.1%	8.4%	100.0%

### Uncollectables and Service Charge Policies

#### Percent of Fees That Are Uncollectable, Private Practice

	Less Than 3%	3 to 8%	9 to 12%	13% or More	Don't Know	Total
Frequency	910	524	335	391	286	2,446
Percent	37.2%	21.4%	13.7%	16.0%	11.7%	100.0%

#### Percent of Fees That Are Based on Contingency, Private Practice

	for a Majority of Work	for Half of Work	Never	Total
Frequency	314	590	1604	2508
Percent	12.5%	23.5%	64.0%	100.0%

#### Percentage of Service Charge Added to Delinquent Accounts, Private Practitioners

	Always	Usually	Sometimes	Never	Total
Frequency	118	186	479	1554	2337
Percent	5.0%	8.0%	20.5%	66.5%	100.0%

#### Last Rate Change, Private Practitioners

	Less Than 7 Months	7 to 11 Months	1 to 2 Years	Over 2 Years	Not Applicable	Total
Frequency	225	448	747	745	265	2,430
Percent	9.3%	18.4%	30.7%	30.7%	10.9%	100.0%

#### Percentage of Last Rate Change, Private Practitioners

	5 or Less %	6 to 10%	11 to 19%	20 or More %	Rate Decrease	Not Applicable	Total
Frequency	615	607	286	183	101	293	2,085
Percent	29.5%	29.1%	13.7%	8.8%	4.8%	14.1%	100.0%

#### Percentage Distribution of Office Overhead Rates by Firm Size

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
1	522	21%	37%	42%	50%	85%
2	103	30%	45%	47%	58%	86%
3	59	30%	42%	46%	50%	82%
4-6	7%	30%	45%	44%	60%	70%
7-10	4					
11-20	5	25%	33%	36%	55%	55%
21-50	1					
>50	1					
Total	702	25%	39%	43%	50%	85%

### Office Overhead Rates as a Percentage of Gross Receipts by Office Location, Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Downtown Detroit & New Center Area	17	29	50	46	50	150
Detroit, not Downtown	8	41	52	60	79	100
Remainder Wayne County	62	20	34	43	50	125
Oakland County (N. Of M-59)	27	20	40	40	51	95
Southfield	34	25	40	42	58	80
Oakland County (S. Of M59)	147	25	34	46	50	80
Mount Clemens Area	15	28	40	37	50	58
Remainder Macomb County	30	25	40	42	60	77
Ann Arbor Area	38	17	30	32	47	70
Livingston County	17	20	29	32	43	75
Battle Creek Area	10	33	40	48	50	88
Bay City/Midland/Saginaw Area	21	24	40	42	55	85
Flint Area	32	25	45	40	53	70
Grand Rapids Area	62	22	32	40	45	82
Jackson Area	13	17	40	41	55	83
Traverse City Area	28	29	46	48	60	80
Kalamazoo Area	16	25	40	44	49	100
Lansing Area	43	30	50	53	60	92
Muskegon/Mid-Michigan Area	16	27	49	45	62	74
Other Metro Areas	5	25	33	32	34	60
Out State, Lower Peninsula	49	33	45	44	50	57
Upper Peninsula	16	25	39	41	55	73
Total	706	25	39	43	50	85

## Staffing Ratios

This section provides ratios of secretaries and legal assistants to attorneys by firm size and practice class of survey respondents.

### Secretary-to-Attorney Ratios

#### Secretary-to-Attorney Ratios by Firm Size

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
1	628	.00	.23	.49	1.00	1.00
2	198	.50	.50	.62	1.00	1.50
3	164	.33	.50	.53	.67	1.00
4-6	315	.30	.50	.52	.67	1.00
7-10	192	.36	.50	.50	.60	1.00
11-20	169	.33	.46	.52	.63	1.00
21-50	199	.38	.45	.48	.53	.78
>50	137	.36	.43	.48	.56	.83
Total	2002	.25	.50	.51	.67	1.00

## Secretary-to-Attorney Ratios by Practice Class, Michigan, 2010

	Ratio of Secretaries to Attorneys					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Sole Practitioner, Office Outside of Home	385	.00	.80	.68	1.00	2.00
Sole Practitioner, Working Out of Home Office	166	.00	.00	.07	.00	.50
Sole Practitioner Sharing Space	103	.00	.50	.48	1.00	1.00
Managing Partner	154	.33	.50	.50	.67	1.00
Equity Partner/Shareholder	549	.36	.50	.54	.67	1.00
Non-Equity Partner	118	.36	.46	.51	.63	1.00
Of Counsel	89	.33	.49	.48	.63	1.00
Senior Associate	191	.36	.50	.59	.67	1.33
Associate	207	.33	.46	.52	.60	1.00
Arbitrator/Mediator	4					
Assigned Counsel	4					
Unemployed, Looking for Work	2					
Unemployed, Looking for Non-Legal Work	5					
Unemployed, Looking for Legal or Non-Legal Work	6					
Other	0					
Total	1983					

## Legal Assistant-to-Attorney Ratios

### Legal Assistant-to-Attorney Ratios by Size of Firm

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
1	497	.00	.00	.30	.30	1.00
2	133	.00	.50	.37	.50	1.00
3	118	.00	.33	.33	.67	1.00
4-6	234	.17	.25	.37	.50	1.00
7-10	158	.11	.18	.26	.30	.71
11-20	153	.08	.20	.29	.33	.79
21-50	184	.08	.11	.15	.18	.38
>50	126	.10	.14	.15	.17	.32
Total	1,603	.00	.13	.28	.33	1.00

### Legal Assistant-to-Attorney Ratios by Practice Class

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Sole Practitioner, Office Outside of Home	272	.00	.00	.39	.73	2.00
Sole Practitioner, Working Out of Home Office	165	.00	.00	.06	.00	.50
Sole Practitioner Sharing Space	72	.00	.00	.24	.50	1.00
Managing Partner	124	.08	.24	.36	.50	1.00
Equity Partner/Shareholder	447	.08	.14	.24	.29	.71
Non-Equity Partner	93	.07	.13	.21	.23	.70

### Legal Assistant-to-Attorney Ratios by Practice Class

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Of Counsel	74	.05	.17	.22	.33	.67
Senior Associate	153	.11	.22	.35	.50	1.00
Associate	172	.11	.25	.46	.50	1.00
Arbitrator/Mediator	2					
Assigned Counsel	3					
Unemployed, Looking for Work	2					
Unemployed, Looking for Non-Legal Work	5	.00	.00	.00	.00	.00
Unemployed, Looking for Legal or Non-Legal Work	5	.00	.00	.00	.00	.00
Other	0					
Total	1,589	.00	.13	.29	.33	1.00

### Billing for Legal Assistant Service

#### Method for Billing Legal Assistant Services by Firm Size

		Included in Attorney Charge	Hourly Basis	Self Developed Fee Schedule	Total
1	N	86	87	24	197
	%	43.7%	44.2%	12.2%	100.0%
2	N	37	46	2	85
	%	43.5%	54.1%	2.4%	100.0%
3	N	21	42	4	67
	%	31.3%	62.7%	6.0%	100.0%
4-6	N	3	5	2	10
	%	30.0%	50.0%	20.0%	100.0%
7-10	N	3	1	0	4
	%	75.0%	25.0%	.0%	100.0%
11-20	N	0	5	0	5
	%	.0%	100.0%	.0%	100.0%
21-50	N	1	0	0	1
	%	100.0%	.0%	.0%	100.0%
>50	N	1	4	0	5
	%	20.0%	80.0%	.0%	100.0%
Total	N	152	190	32	374
	%	40.6%	50.8%	8.6%	100.0%

### Attorney Perspectives

#### Compared to a Year Ago What Changes in Client Paying Behaviors Have You Experienced

	N	Not At All	Slightly More Often	Much More Often	Total %
Clients Paying Later	2267	23.8%	47.9%	28.4%	100.0%
Clients Seeking Discounts	2219	35.4%	39.7%	25.0%	100.0%
Clients Seeking To Pay Over Time	2225	30.1%	41.3%	28.6%	100.0%
Clients Using Credit Cards	2176	55.4%	33.0%	11.6%	100.0%



**Over the Next Year Indicate the Likelihood That the Following Will Occur, Private Practitioners**

	N	Very Likely	Likely	Unlikely	Not Applicable	Do Not Know	Total
Hiring New Associates	1352	2.9%	5.9%	73.1%	14.2%	3.9%	100.0%
Creating New Para Legals	1345	1.0%	8.0%	71.7%	16.0%	3.3%	100.0%
Lawyer Salaries Increased	1344	2.5%	14.9%	51.3%	24.1%	7.3%	100.0%
Lawyer Lay Offs	1332	1.1%	2.6%	46.4%	44.8%	5.2%	100.0%
New Lawyer Hiring Freeze	1330	7.1%	8.2%	25.8%	53.8%	5.2%	100.0%
Lawyer Bonus Curtailed	1322	5.5%	9.9%	26.2%	51.4%	7.0%	100.0%
Part Time Flex Time Non Att. Staff Inc.	1290	2.1%	11.3%	35.0%	43.6%	8.1%	100.0%
Pro Bono Down	1295	3.9%	11.0%	59.1%	16.6%	9.5%	100.0%
Work Hours Reduced	1295	3.1%	13.6%	68.3%	8.9%	6.2%	100.0%
Use Of Contract Lawyers Increased	1315	2.3%	12.2%	35.7%	44.0%	5.9%	100.0%
Lawyer Bonus Increased	1337	1.9%	12.5%	48.8%	30.4%	6.4%	100.0%
Non Lawyer Staff Layoffs	1297	1.2%	5.9%	46.3%	39.6%	7.1%	100.0%
Capital Contributions Increased	1304	2.3%	13.1%	40.3%	35.2%	9.0%	100.0%
Billing Rates Adjusted Up	1317	4.8%	29.7%	49.4%	9.1%	7.0%	100.0%
Billing Rates Adjusted Down	1298	1.5%	6.4%	73.7%	12.1%	6.3%	100.0%
Billing Rates Unchanged	1298	16.5%	34.7%	31.5%	10.8%	6.5%	100.0%
Office Lease Renegotiated	1303	6.0%	16.1%	44.5%	26.8%	6.6%	100.0%
Non Lawyer Staff Hiring Freeze	1296	5.6%	11.6%	30.0%	45.9%	6.9%	100.0%
Non Lawyer Bonus Curtailed	1293	4.0%	9.3%	33.4%	45.2%	8.0%	100.0%
Non Lawyer Benefits Decreased or Co-Sharing Increased	1291	2.3%	8.7%	35.9%	45.9%	7.2%	100.0%
Prompt Payment Discounts Offered	1297	5.3%	22.9%	46.8%	17.7%	7.3%	100.0%
Security Deposits Taken on Deferred Fees	1294	5.0%	18.3%	39.8%	26.9%	10.0%	100.0%
Payments to Vendors Delayed	1290	5.3%	17.1%	58.0%	13.6%	6.0%	100.0%
Alternative Hourly Billing Methods	1292	4.6%	25.2%	46.1%	16.1%	8.0%	100.0%
Rate Freezes Offered to Select Clients	1294	4.5%	19.4%	48.4%	19.1%	8.7%	100.0%
Line Of Credit Increased	1294	1.9%	9.9%	52.9%	25.8%	9.5%	100.0%
Pro Bono Up	1283	1.7%	15.4%	58.8%	14.3%	9.7%	100.0%
CLE Participation Down	1292	3.7%	9.4%	65.3%	13.2%	8.4%	100.0%
New Lawyer Offers Re-tracted or Delayed	1323	2.3%	2.9%	26.8%	62.1%	5.9%	100.0%
Lawyer Salary Increases Delayed	1322	5.7%	10.7%	25.7%	50.7%	7.3%	100.0%
CLE Participation Up	1267	4.4%	23.9%	51.3%	11.9%	8.4%	100.0%
CLE Participation Down	1292	3.7%	9.4%	65.3%	13.2%	8.4%	100.0%

### Over the Next Year Indicate the Likelihood That the Following Will Occur, Non-Private Practitioners

	N	Very Likely	Likely	Unlikely	Not Applicable	Don't Know	Total
Lawyer Salaries Increased	1,196	2.4%	17.7%	55.7%	18.8%	5.4%	100.0%
Lawyers Hours Increased	1,196	8.6%	32.4%	30.9%	21.7%	6.4%	100.0%
Lawyer Layoffs	1,195	2.5%	14.5%	49.0%	19.7%	14.3%	100.0%
Lawyer Hiring Freeze	1,195	13.7%	27.7%	22.1%	25.4%	11.1%	100.0%
Lawyer Offers Retracted or Delayed	1,185	3.4%	7.9%	29.4%	45.3%	14.0%	100.0%
Lawyer Salary Increases Delayed	1,187	12.9%	22.6%	25.3%	28.9%	10.4%	100.0%
Use of Contract Lawyers Increased	1,187	4.3%	18.4%	27.8%	36.5%	13.0%	100.0%
Non Lawyer Staff Layoffs	1,183	7.2%	19.1%	43.5%	13.9%	16.2%	100.0
Non Lawyer Staff Hiring Freeze	1,190	14.5%	30.1%	25.3%	15.0%	15.1%	100.0%
Non Lawyer Staff Benefits Reduced or Co-sharing Increased	1,189	10.0%	23.5%	30.3%	20.6%	15.6%	100.0%
Part Time or Flex Time for Non Lawyer Staff Increased	1,184	2.5%	14.3%	36.6%	26.3%	20.4%	100.0%
Work Hours Reduced	1,186	3.8%	7.0%	63.0%	18.0%	8.3%	100.0%
Pro Bono Work Reduced	1,186	1.2%	1.9%	19.4%	64.5%	13.1%	100.0%
Pro Bono Work Increased	1,188	1.2%	5.4%	16.8%	63.6%	13.0%	100.0%
CLE Course Participation Reduced	1,180	3.7%	11.0%	30.3%	40.1%	14.8%	100.0%
CLE Course Participation Increased	1,145	1.2%	6.8%	35.9%	39.9%	16.2%	100.0%

## Job Satisfaction and Economic Sentiment About the Practice of Law

This section summarizes survey respondent attitudes on their satisfaction with the practice of law and their views on the changing nature of law practice in the state. The 2010 survey probed views on current job satisfaction and expected future job satisfaction.

### Current Satisfaction With Practicing Law

	N	A Great Deal	Enough	Too Little	None	Not Applicable	Total
Private Practitioners	2,511	37.5%	36.6%	23.0%	2.8%	0.0%	100.0%
Non-Private Practitioners	1,196	37.4%	33.1%	13.2%	2.8%	13.5	100.0%

### Expected Future Satisfaction With Practicing Law in Current Practice Area

	N	More Satisfying	Less Satisfying	Remaining the Same	Unsatisfying Enough To Change Practice Areas	Unsatisfying Enough To Quit	Not Applicable	Total
Private Practitioners	2,530	18.7%	52.2%	19.1%	3.7%	6.4%	0.0%	100.0%
Non-Private Practitioners	1,162	15.0%	51.1%	11.6%	2.4%	3.6%	16.3%	100.0%

### The Degree to Which the Following Creates Job Stress

	N	Very Much	Somewhat	Very Little	Not Applicable	Total
Insufficient Revenue	2,523	37.1	36.9	18.8	7.2	100.0
Insufficient Cash Flow	2,513	36.3	33.4	21.8	8.6	100.0
Workload	2,521	23.9	47.3	26.3	2.4	100.0

### The Degree to Which the Following Creates Job Stress

	N	Very Much	Somewhat	Very Little	Not Applicable	Total
Billable Hours	2,481	11.8	20.0	23.0	45.2	100.0
Difficult Clients	2,519	18.4	43.5	34.4	3.7	100.0
Personal Issues	2,517	11.0	32.5	45.5	11.0	100.0
Demands Of A Second Job	2,421	2.0	5.0	9.3	83.7	100.0

### How Likely is it That You Will Switch Practice Areas in the Next Two Years?

	N	Very Likely	Somewhat Likely	Unlikely	Total
Private Practitioners	2,537	7.5%	17.7%	74.8%	100.0%

### Reasons Not to Switch Fields of Law, Private Practitioners

	N	Very Much Agree	Agree	Do Not Agree	N/A Do Not Know	Total
New Content Area Too Complex To Quickly Learn	2,433	11.4%	23.8%	47.6%	17.2%	100.0%
Court Rules And Regs Are Too Tedious	2,429	5.9%	20.1%	57.1%	16.8%	100.0%
Incumbents Have Already Flooded the Market	2,420	8.5%	26.2%	42.8%	22.5%	100.0%
Computer Skills Are Insufficient	2,424	3.4%	9.5%	71.9%	15.1%	100.0%
New Marketing Costs Are Too High	2,407	7.5%	27.1%	42.3%	23.1%	100.0%

### Factors That Could Influence the Decision to Switch to a Salaried Job, Private Practitioners

	N	Very Much Agree	Agree	Do Not Agree	N/A Do Not Know	Total
Salaried Legal Work Is Appealing	2,436	22.0%	31.7%	30.3%	16.0%	100.0%
A Salaried Job With Benefits Is Appealing	2,432	26.7%	34.1%	23.4%	15.9%	100.0%
Having A Steady Income Is Appealing	2,434	30.5%	40.2%	16.4%	12.9%	100.0%

### How Respondents Feel About Personal Workload

	N	Insufficient	All I Can Handle	More Than I Can Handle	Total
Private Practitioners	2,516	38.7%	49.7%	11.6%	100.0%
Non-Private Practitioners	1,188	8.1%	66.6%	25.3%	100.0%

### What Do You Think the Economic Circumstances Will Be in the Future?

	N	Better	Worse	About the Same	Don't Know	Not Applicable	Total
Private Practitioners	2,518	23.8%	23.7%	48.2%	4.2%	0.0%	100.0%
Non-Private Practitioners	1,203	16.4%	23.9%	49.6%	2.7%	7.3%	100.0%

## Law School Debt

### Total Law School Debt for Individuals Attending Law School Within the Last 10 Years by Years in Practice, Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<1	29	70,000	100,000	107,828	150,000	200,000
1-2	159	65,000	90,000	96,492	120,000	180,000
3-5	174	50,000	80,000	82,785	110,000	150,000
6-10	181	50,000	75,000	77,279	100,000	150,000
Total	543	55,000	80,000	86,301	110,000	160,000

**Total Law School Debt for Individuals Attending Law School Within the Last 10 Years by Years in Practice, Non-Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
1-2	74	65,000	100,000	96,061	125,000	175,000
3-5	90	54,000	84,500	84,211	110,000	150,000
6-10	94	55,000	80,000	76,005	100,000	130,000
Total	258	58,000	80,500	84,620	110,000	150,000

**Monthly Law School Debt Payments for Individuals Attending Law School Within the Last 10 Years by Years In Practice, Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<1	25	120	600	657	1,000	1,800
1-2	147	400	700	1,070	1,000	1,500
3-5	168	315	500	570	750	1,200
6-10	178	259	400	989	600	1,200
Total	518	300	500	860	800	1,400

**Monthly Law School Debt Payments for Individuals Attending Law School Within the Last 10 Years by Years in Practice, Non-Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
1-2	73	300	605	622	800	1,450
3-5	87	290	443	502	700	1,125
6-10	92	297	400	436	600	805
Total	252	299	450	513	700	1,200

**Total Law School Debt for Individuals Attending Law School Within the Last 10 Years by Income Category, Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<\$40k	199	60,000	85,000	90,734	120,000	180,000
\$40-59.9k	99	60,000	99,000	94,035	124,000	165,000
\$60-79.9k	95	50,000	70,000	76,958	105,000	150,000
\$80-114.9k	108	49,000	73,500	76,738	110,000	149,000
\$115-149.9k	45	35,000	65,000	66,714	90,000	150,000
150-219.9k	15	15,000	50,000	43,800	60,000	86,000
\$220k+	15	40,000	64,000	64,600	85,000	125,000
Total	576	50,000	80,000	82,626	110,000	160,000

**Total Law School Debt for Individuals Attending Law School Within the Last 10 Years by Income Category, Non-Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<\$40k	38	80,000	97,500	99,763	130,000	156,000
\$40-59.9k	103	60,000	82,000	89,121	120,000	160,000
\$60-79.9k	72	55,000	80,000	80,250	100,000	143,000
\$80-114.9k	73	40,000	65,000	69,630	100,000	140,000
\$115-149.9k	32	20,000	46,000	50,319	80,000	100,000
\$150-219.9k	11	20,000	50,000	51,455	80,000	130,000
\$220k+	4	70,000	105,000	100,000	130,000	130,000
Total	333	50,000	80,000	79,302	108,000	150,000

**Monthly Law School Debt Payments for Individuals Attending Law School Within the Last 10 Years by Years Income Category, Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<\$40k	168	259	450	830	700	1,500
\$40-59,9k	91	350	500	597	839	1,250
\$60-79,9k	81	315	589	620	900	1,200
\$80-114,9k	86	388	595	1,382	900	1,500
\$115-149,9k	37	280	475	1,563	760	7,000
150-219,9k	7	150	204	277	500	500
\$220k+	9	50	480	459	600	1,100
Total	479	305	500	891	800	1,400

**Monthly Law School Debt Payments for Individuals Attending Law School Within the Last 10 Years by Years Income Category, Non-Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<\$40k	26	200	350	464	700	1,100
\$40-59.9k	87	300	500	559	700	1,100
\$60-79.9k	59	300	410	478	605	1,200
\$80-114.9k	49	300	500	542	750	1,200
\$115-149.9k	19	234	321	451	573	1,200
\$150-219.9k	5	293	300	291	300	460
\$220k+	0	.	.	.	.	.
Total	245	300	450	512	700	1,200

**Total Law School Debt for Individuals Attending Law School Within the Last 10 Years by Classification, Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Sole Practitioner, Office Outside Of Home	76	55,000	80,000	88,145	117,500	150,000
Sole Practitioner, Working Out Of Home Office	67	53,000	80,000	87,978	120,000	200,000
Sole Practitioner Sharing Space	25	68,000	85,000	104,600	130,000	220,000
Managing Partner	18	60,000	80,000	84,444	100,000	150,000
Equity Partner/Shareholder	25	53,000	80,000	82,360	100,000	145,000
Non-Equity Partner	20	50,000	75,000	78,400	100,000	127,500
Of Counsel	16	54,500	72,500	88,938	112,000	215,000
Senior Associate	113	55,000	70,000	81,489	108,000	165,000
Associate	163	60,000	80,000	86,967	113,000	160,000
Arbitrator/Mediator	0	.	.	.	.	.
Assigned Counsel	5	100,000	125,000	112,800	141,000	150,000
Unemployed, Looking for Work	5	45,000	100,000	76,000	105,000	110,000
Unemployed, Looking for Non-Legal Work	3	70,000	80,000	95,000	135,000	135,000
Unemployed, Looking for Legal Or Non-Legal Work	1	35,000	35,000	35,000	35,000	35,000
Other	0	.	.	.	.	.
Total	537	55,000	80,000	86,455	110,000	165,000

**Total Law School Debt for Individuals Attending Law School Within the Last 10 Years by Classification, Non-Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
In House Counsel (for-Profit Org.)	52	46,000	80,000	80,327	111,500	140,000
In-House Counsel (Family Or Closely Held Business)	6	65,000	70,500	74,333	100,000	110,000
Legal Service Agency	25	58,000	90,000	88,500	116,000	140,000
In-House Counsel (Not-for-Profit Org.)	18	52,000	70,000	75,111	100,000	130,000
City Agency	3	100,000	120,000	131,667	175,000	175,000
County Agency	5	51,000	70,000	70,200	80,000	100,000
Village, Township	0	.	.	.	.	.
State Agency	21	50,000	75,000	77,381	100,000	131,000
County Prosecutor	5	100,000	100,000	93,800	110,000	115,000
County Assistant Prosecutor	23	59,000	84,000	87,739	120,000	150,000
Public Defender	3	60,000	104,000	94,667	120,000	120,000
Judge-State	1	75,000	75,000	75,000	75,000	75,000
Judge-Federal	0	.	.	.	.	.
Administrative Law Judge/Referee	5	100,000	143,000	128,000	160,000	170,000
Law Clerk	18	50,000	70,000	79,167	110,000	150,000
Court Clerk	2	160,000	173,500	173,500	187,000	187,000
Non Clerk Attorney In Court System	12	42,500	82,500	80,917	122,000	140,000
Federal Prosecutor	1	60,000	60,000	60,000	60,000	60,000
Other Federal Agency	21	70,000	85,000	87,571	108,000	130,000
Military	0	.	.	.	.	.
Academia/Professor Of Law	7	70,000	85,000	85,857	100,000	110,000
Lobbyist/Trade Assoc./Gov. Relations	4	55,000	65,000	70,000	85,000	100,000
Management/Nonlegal	4	71,500	102,000	103,250	135,000	150,000
Non-Profit Organization, Not Law Related	2	34,000	52,000	52,000	70,000	70,000
Not Practicing Law But Working	11	60,000	80,000	80,318	90,000	157,000
Retired	1	9,000	9,000	9,000	9,000	9,000
Unemployed, Looking for Work	3	10,000	90,000	91,667	175,000	175,000
Other	3	80,000	110,000	113,333	150,000	150,000
Total	256	58,000	80,500	84,344	110,000	150,000

**Monthly Law School Debt Payments for Individuals Attending Law School Within the Last 10 Years by Classification, Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Sole Practitioner, Office Outside Of Home	70	263	500	1,282	800	1,600
Sole Practitioner, Working Out Of Home Office	63	250	400	492	594	1,500
Sole Practitioner Sharing Space	26	340	500	619	835	1,300
Managing Partner	17	368	400	504	500	1,500
Equity Partner/Shareholder	25	300	400	488	600	1,100
Non-Equity Partner	19	300	550	618	900	1,500
Of Counsel	16	400	426	587	700	1,576
Senior Associate	111	284	500	827	800	1,200

**Monthly Law School Debt Payments for Individuals Attending Law School Within the Last 10 Years by Classification, Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Associate	155	342	570	1,086	1,000	1,500
Arbitrator/Mediator	0	.	.	.	.	.
Assigned Counsel	3	415	665	660	900	900
Unemployed, Looking for Work	5	132	145	245	250	700
Unemployed, Looking for Non-Legal Work	2	0	300	300	600	600
Unemployed, Looking for Legal Or Non-Legal Work	0	.	.	.	.	.
Other	0	.	.	.	.	.
Total	<b>512</b>	<b>300</b>	<b>500</b>	<b>865</b>	<b>800</b>	<b>1,400</b>

**Monthly Law School Debt Payments for Individuals Attending Law School Within the Last 10 Years Classification, Non-Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
In House Counsel (for-Profit Org.)	51	270	460	508	700	1,200
In-House Counsel (Family Or Closely Held Business)	5	325	500	605	1,000	1,200
Legal Service Agency	24	275	375	490	753	1,100
In-House Counsel (Not-for-Profit Org.)	17	350	443	642	700	3,000
City Agency	3	450	500	767	1,350	1,350
County Agency	5	361	500	450	500	600
Village, Township	0	.	.	.	.	.
State Agency	21	304	425	551	700	1,200
County Prosecutor	5	350	529	459	529	686
County Assistant Prosecutor	22	250	377	396	500	750
Public Defender	3	200	608	538	805	805
Judge-State	1	321	321	321	321	321
Judge-Federal	0	.	.	.	.	.
Administrative Law Judge/Referee	5	475	800	718	800	1,200
Law Clerk	18	290	400	509	750	1,200
Court Clerk	2	623	703	703	782	782
Non Clerk Attorney In Court System	12	220	337	487	643	1,500
Federal Prosecutor	1	0	0	0	0	0
Other Federal Agency	21	300	500	525	775	1,000
Military	0	.	.	.	.	.
Academia/Professor Of Law	7	400	450	500	600	700
Lobbyist/Trade Assoc./Gov. Relations	4	325	525	638	950	1,200
Management/Non Legal	4	0	275	338	675	800
Non-Profit Organization, Not Law Related	2	324	388	388	451	451
Not Practicing Law But Working	11	240	500	486	700	1,148
Retired	1	0	0	0	0	0
Unemployed, Looking for Work	3	90	600	597	1,100	1,100
Other	2	915	1,008	1,008	1,100	1,100
Total	<b>250</b>	<b>300</b>	<b>450</b>	<b>516</b>	<b>700</b>	<b>1,200</b>

## Pro Bono Work

### Pro Bono Hours Per Year by Income Category, Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<\$40k	322	12	25	59	50	200
\$40-59.9k	147	10	20	37	40	100
\$60-79.9k	185	12	25	58	50	150
\$80-114.9k	249	10	20	40	50	150
\$115-149.9k	127	10	25	42	50	120
150-219.9k	151	10	20	39	50	104
\$220k+	192	10	20	36	40	100
Total	1373	10	24	46	50	150

### Pro Bono Hours Per Year by Income Category, Non-Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<\$40k	27	15	30	183	60	800
\$40-59.9k	41	10	30	225	50	1,950
\$60-79.9k	44	9	20	87	50	200
\$80-114.9k	72	10	20	105	40	500
\$115-149.9k	30	10	20	33	30	52
\$150-219.9k	29	10	20	146	50	1,000
\$220k+	5	25	25	30	40	50
Total	248	10	20	125	50	500

### Pro Bono Hours Per Year by Years In Practice, Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<1	14	10	18	22	30	50
1-2	99	10	25	51	50	200
3-5	121	10	30	57	50	200
6-10	143	10	20	42	40	100
11-15	166	10	25	36	40	100
16-25	331	10	25	50	50	200
26-30	224	14	25	52	50	180
31-35	225	10	25	46	50	150
>35	202	10	20	40	50	150
Total	1,525	10	25	46	50	150

### Pro Bono Hours Per Year by Years In Practice, Non-Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
1-2	20	8	18	266	80	2,040
3-5	19	10	30	139	52	2,000
6-10	36	10	20	95	40	400
11-15	36	5	10	112	65	700
16-25	55	10	20	97	50	500
26-30	37	10	24	94	30	500
31-35	29	10	25	175	50	2,000
>35	13	10	35	43	50	120
Total	245	10	20	122	50	500



**Pro Bono Hours Per Year by Classification, Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Sole Practitioner, Office Outside Of Home	381	10	25	54	50	150
Sole Practitioner, Working Out Of Home Office	183	12	25	59	60	300
Sole Practitioner Sharing Space	103	15	25	46	50	120
Managing Partner	105	10	20	54	50	250
Equity Partner/Shareholder	386	10	20	38	50	100
Non-Equity Partner	81	15	25	39	40	100
Of Counsel	46	15	25	36	50	100
Senior Associate	101	10	20	37	40	110
Associate	123	10	25	37	50	100
Arbitrator/Mediator	2	50	77	77	104	104
Assigned Counsel	5	20	50	56	100	100
Unemployed, Looking for Work	4	28	45	151	275	500
Unemployed, Looking for Non-Legal Work	1	50	50	50	50	50
Unemployed, Looking for Legal Or Non-Legal Work	3	100	150	150	200	200
Other	0	.	.	.	.	.
Total	1,524	10	25	47	50	150

**Pro Bono Hours Per Year by Classification, Non-Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
In House Counsel (for-Profit Org.)	51	10	20	27	30	75
In-House Counsel (Family Or Closely Held Business)	12	22	35	47	50	200
Legal Service Agency	30	10	45	388	150	2,000
In-House Counsel (Not-for-Profit Org.)	30	10	25	176	50	1,820
City Agency	3	6	10	9	10	10
County Agency	10	10	35	54	50	240
Village, Township	0	.	.	.	.	.
State Agency	9	20	20	21	25	40
County Prosecutor	3	5	10	32	80	80
County Assistant Prosecutor	10	5	10	10	10	24
Public Defender	3	40	500	847	2,000	2,000
Judge-State	6	40	51	65	120	120
Judge-Federal	1	15	15	15	15	15
Administrative Law Judge/Referee	2	40	40	40	40	40
Law Clerk	4	20	62	99	177	250
Court Clerk	1	10	10	10	10	10
Non Clerk Attorney In Court System	8	10	15	49	95	150
Federal Prosecutor	0	.	.	.	.	.
Other Federal Agency	4	11	20	23	36	52
Military	0	.	.	.	.	.
Academia/Professor Of Law	30	10	20	187	200	1,000
Lobbyist/Trade Assoc./Gov. Relations	1	5	5	5	5	5
Management/Non Legal	9	6	10	15	20	45
Non-Profit Organization, Not Law Related	5	20	20	20	20	20
Not Practicing Law But Working	12	10	25	105	55	500
Retired	4	9	25	40	70	100

**Pro Bono Hours Per Year by Classification, Non-Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Unemployed, Looking for Work	3	10	30	30	50	50
Other	3	8	50	36	50	50
Total	<b>254</b>	<b>10</b>	<b>20</b>	<b>123</b>	<b>50</b>	<b>500</b>

**Pro Bono Hours Per Year by Office Location, Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Downtown Detroit & New Center Area	114	10	30	41	50	150
Detroit, Not Downtown	19	25	50	120	100	520
Remainder Wayne County	87	10	20	43	50	200
Oakland County (N. Of M-59)	46	10	20	33	50	100
Southfield	61	10	20	34	40	100
Oakland County (S. Of M59)	312	10	20	41	50	120
Mount Clemens Area	35	10	24	28	40	75
Remainder Macomb County	63	15	25	49	50	200
Ann Arbor Area	94	10	25	45	50	150
Livingston County	24	20	40	79	50	100
Battle Creek Area	18	10	20	26	30	100
Bay City/Midland/Saginaw Area	50	10	20	53	50	250
Flint Area	67	10	20	40	50	104
Grand Rapids Area	155	15	30	49	50	200
Jackson Area	25	20	25	65	100	200
Traverse City Area	46	10	20	48	50	200
Kalamazoo Area	37	10	25	55	60	200
Lansing Area	107	10	20	59	50	200
Muskegon/Mid-Michigan Area	33	15	20	57	50	200
Other Metro Areas	11	20	40	37	50	100
Out State, Lower Peninsula	98	12	20	47	40	150
Upper Peninsula	21	20	40	52	50	100
Total	<b>1,523</b>	<b>10</b>	<b>25</b>	<b>46</b>	<b>50</b>	<b>150</b>

**Pro Bono Hours Per Year by Office Location, Non-Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Downtown Detroit & New Center Area	47	10	20	99	50	360
Detroit, Not Downtown	4	8	15	529	1,050	2,080
Remainder Wayne County	18	20	20	31	30	100
Oakland County (N. Of M-59)	13	10	20	28	30	100
Southfield	9	10	20	74	40	500
Oakland County (S. Of M59)	22	10	17	43	50	200
Mount Clemens Area	5	10	25	26	40	50
Remainder Macomb County	7	2	10	14	30	30
Ann Arbor Area	20	10	30	242	100	1,750
Livingston County	2	20	30	30	40	40
Battle Creek Area	3	5	10	13	24	24
Bay City/Midland/Saginaw Area	7	6	10	22	50	50
Flint Area	5	10	30	39	30	120
Grand Rapids Area	16	18	25	47	50	200
Jackson Area	9	20	40	76	50	400
Traverse City Area	2	8	29	29	50	50

### Pro Bono Hours Per Year by Office Location, Non-Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Kalamazoo Area	7	4	10	14	24	40
Lansing Area	35	10	20	199	80	2,000
Muskegon/Mid-Michigan Area	2	10	980	980	1,950	1,950
Other Metro Areas	5	5	10	171	40	800
Out State, Lower Peninsula	8	10	17	269	46	2,000
Upper Peninsula	7	10	50	403	500	1,820
Total	253	10	20	123	50	500

### Access To Justice Contributions

#### Access To Justice Contributions by Office Location, Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Downtown Detroit & New Center Area	83	200	300	351	300	300
Detroit, Not Downtown	2	100	200	200	300	300
Remainder Wayne County	13	100	200	729	300	5,000
Oakland County (N. Of M-59)	12	25	75	190	200	1,200
Southfield	21	100	100	280	300	1,000
Oakland County (S. Of M59)	107	100	300	384	300	1,000
Mount Clemens Area	9	100	200	278	500	500
Remainder Macomb County	12	100	163	222	400	500
Ann Arbor Area	49	300	300	991	400	3,000
Livingston County	3	10	100	70	100	100
Battle Creek Area	5	100	200	180	250	250
Bay City/Midland/Saginaw Area	5	150	200	200	250	300
Flint Area	15	100	300	237	300	500
Grand Rapids Area	84	100	300	689	350	1,200
Jackson Area	7	100	300	244	300	500
Traverse City Area	10	50	100	182	100	1,000
Kalamazoo Area	12	200	300	392	325	1,250
Lansing Area	34	100	250	234	300	500
Muskegon/Mid-Michigan Area	10	100	375	495	500	2,300
Other Metro Areas	3	300	300	367	500	500
Out State, Lower Peninsula	13	200	250	312	300	1,000
Upper Peninsula	5	200	300	250	300	300
Total	514	100	300	453	300	1,000

#### Access To Justice Contributions by Office Location, Non-Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Downtown Detroit & New Center Area	47	100	200	256	300	800
Detroit, Not Downtown	3	25	250	275	550	550
Remainder Wayne County	10	100	200	199	300	350
Oakland County (N. Of M-59)	11	100	200	194	300	300
Southfield	6	70	100	101	100	200
Oakland County (S. Of M59)	15	25	100	141	300	350
Mount Clemens Area	4	63	138	200	338	500
Remainder Macomb County	6	80	100	122	100	300
Ann Arbor Area	21	100	250	313	350	800
Livingston County	3	50	100	108	175	175

### Access To Justice Contributions by Office Location, Non-Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Battle Creek Area	2	10	25	25	40	40
Bay City/Midland/Saginaw Area	7	100	250	254	400	500
Flint Area	4	58	95	104	150	200
Grand Rapids Area	25	100	125	238	300	1,000
Jackson Area	3	200	200	383	750	750
Traverse City Area	1	1,000	1,000	1,000	1,000	1,000
Kalamazoo Area	4	50	75	75	100	100
Lansing Area	46	100	250	301	300	1,000
Muskegon/Mid-Michigan Area	0	.	.	.	.	.
Other Metro Areas	3	50	75	75	100	100
Out State, Lower Peninsula	11	100	200	216	300	500
Upper Peninsula	5	100	125	150	200	300
Total	237	100	200	236	300	800

### Access To Justice Contributions Per Year by Income Category, Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<\$40k	57	50	100	150	200	500
\$40-59.9k	21	100	200	231	300	500
\$60-79.9k	43	50	100	187	200	350
\$80-114.9k	80	100	200	874	300	1,050
\$115-149.9k	54	200	300	381	300	1,250
150-219.9k	65	200	300	491	300	1,200
\$220k+	132	300	300	482	325	1,000
Total	452	100	300	459	300	1,000

### Access To Justice Contributions Per Year by Income Category, Non-Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<\$40k	16	100	125	206	250	800
\$40-59.9k	17	100	100	140	200	300
\$60-79.9k	37	50	100	156	300	300
\$80-114.9k	67	50	150	240	300	1,000
\$115-149.9k	54	100	175	256	300	1,000
\$150-219.9k	32	200	300	363	400	1,000
\$220k+	9	100	200	203	300	300
Total	232	100	188	236	300	800

### Access To Justice Contributions Per Year by Classification, Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Sole Practitioner, Office Outside Of Home	74	100	200	276	300	1,000
Sole Practitioner, Working Out Of Home Office	33	25	100	165	300	500
Sole Practitioner Sharing Space	18	50	175	220	300	1,000
Managing Partner	32	175	300	347	400	1,200
Equity Partner/Shareholder	206	200	300	568	350	1,000
Non-Equity Partner	54	150	300	297	300	1,000
Of Counsel	24	175	300	450	300	2,000
Senior Associate	28	88	100	164	275	300
Associate	40	100	175	1,062	300	5,000
Arbitrator/Mediator	2	10	30	30	50	50

**Access To Justice Contributions Per Year by Classification, Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Assigned Counsel	1	500	500	500	500	500
Unemployed, Looking for Work	0	.	.	.	.	.
Unemployed, Looking for Non-Legal Work	0	.	.	.	.	.
Unemployed, Looking for Legal or Non-Legal Work	0	.	.	.	.	.
Other	0	.	.	.	.	.
Total	512	100	300	454	300	1,000

**Access To Justice Contributions Per Year by Classification, Non-Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
In House Counsel (for-Profit Org.)	34	100	100	194	300	500
In-House Counsel (Family or Closely Held Business)	7	100	300	234	300	500
Legal Service Agency	19	100	200	292	300	1,000
In-House Counsel (Not-for-Profit Org.)	12	75	150	247	250	1,000
City Agency	1	85	85	85	85	85
County Agency	7	25	300	334	500	1,000
Village, Township	0	.	.	.	.	.
State Agency	26	100	250	287	400	1,000
County Prosecutor	2	25	163	163	300	300
County Assistant Prosecutor	8	95	100	144	205	300
Public Defender	4	75	150	175	275	350
Judge-State	23	100	200	266	350	500
Judge-Federal	4	163	300	256	350	400
Administrative Law Judge/Referee	14	50	100	104	125	250
Law Clerk	7	25	200	156	300	300
Court Clerk	0	.	.	.	.	.
Non Clerk Attorney In Court System	9	100	100	172	200	520
Federal Prosecutor	4	200	300	300	400	500
Other Federal Agency	7	40	200	177	300	350
Military	0	.	.	.	.	.
Academia/Professor Of Law	22	100	200	345	400	1,000
Lobbyist/Trade Assoc./Gov. Relations	5	50	300	195	300	300
Management/Non Legal	4	85	150	143	200	200
Non-Profit Organization, Not Law Related	4	100	150	175	250	300
Not Practicing Law But Working	8	38	100	111	150	300
Retired	9	75	200	372	600	1,000
Unemployed, Looking for Work	0	.	.	.	.	.
Other	1	25	25	25	25	25
Total	241	100	200	235	300	650

**Access To Justice Contributions Per Year by Years in Practice, Private Practitioners**

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<1	0	.	.	.	.	.
1-2	20	25	100	345	200	2,650
3-5	24	50	100	1,379	300	5,000
6-10	40	100	200	260	300	900
11-15	58	100	225	318	300	1,800

#### Access To Justice Contributions Per Year by Years in Practice, Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
16-25	110	100	300	562	300	1,000
26-30	82	200	300	375	350	1,000
31-35	87	100	300	295	300	600
>35	93	200	300	498	300	1,500
Total	<b>514</b>	<b>100</b>	<b>300</b>	<b>454</b>	<b>300</b>	<b>1,000</b>

#### Access To Justice Contributions Per Year by Years in Practice, Non-Private Practitioners

	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
1-2	9	50	284	210	300	350
3-5	14	50	75	111	200	300
6-10	16	85	100	188	275	650
11-15	26	100	100	164	300	300
16-25	67	75	100	193	300	500
26-30	47	125	300	303	300	1,000
31-35	41	100	300	390	520	1,000
>35	18	75	125	215	200	1,000
Total	<b>238</b>	<b>100</b>	<b>200</b>	<b>243</b>	<b>300</b>	<b>800</b>

## Appendix

### Field of Practice by Hourly Billing Rate by Office Location

These are field of practice by hourly billing rate by office location tables. All zero rates were eliminated. In fields of practice where less than 5 respondents reported percentile information is not displayed but is included in the total. In cases where zero respondents reported the field of law is not displayed.

Field of Practice by Hourly Billing Rate	Ann Arbor Area					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Administrative Law	2					
Alternative Dispute Resolution	10	200	300	275	350	350
Appellate Law	1					
Auto (not lemon) Law	3					
Bankruptcy, Creditor	1					
Bankruptcy, Debtor	7	225	250	244	275	320
Business Planning	20	223	255	259	320	400
Civil Rights	4	188	263	263	338	375
Collections, Creditor	1					
Collections, Debtor	0					
Condemnation Law	0					
Construction Law	6	200	260	283	300	480
Consumer Law (including lemon law)	2					
Criminal (Private Defendant)	7	150	200	209	250	300
Criminal (Public Defendant)	1					
Employment Litigation (Defendant)	5	265	295	305	350	390
Employment Litigation (Plaintiff)	5	300	325	310	350	375
Environmental law	3					
Family Law	18	200	250	226	275	300
Foreclosure, Debtor	2					
General Practice	15	150	240	234	285	400
Health & Hospital Law	3					
Immigration Law	3					
Insurance Law	7	135	350	278	395	440
Intellectual Property/Trade Secrets	12	245	323	324	408	460
Labor Law (Defendant)	2					
Labor Law (Plaintiff)	1					
Landlord/Tenant (Commercial)	1					
Landlord/Tenant (Residential)	2					
Medical Malpractice (Plaintiff)	5	300	400	420	400	750
Medical Malpractice (defendant)	1					
Other Civil Law	26	250	290	305	325	445
Other Professional Liability	4					
Personal Injury (Defendant)	4					
Personal Injury (Plaintiff)	10	295	325	334	400	450
Probate, administration, decedent's estates, guardianship & conservatorship.	14	200	250	239	275	345
Probate litigation, decedent's estates, guardianship & conservatorship.	8	175	213	216	263	275
Probate, Trust Administration	10	275	300	268	300	385
Probate, Trust Litigation	3					

Field of Practice by Hourly Billing Rate		Ann Arbor Area				
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Product Liability	2					
Public Corporation Law ( including city, municipal and village)	2					
Real Estate	19	225	250	249	300	325
Tax Law	8	285	300	315	365	395
Total	260	200	275	270	318	413

Field of Practice by Hourly Billing Rate		Battle Creek Area				
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Bankruptcy, Debtor	2					
Business Planning	7	200	240	211	250	250
Collections, Debtor	1					
Construction Law	1					
Criminal (Private Defendant)	5	175	200	193	200	225
Criminal (Public Defendant)	2					
Family Law	4					
Foreclosure, Lender	1					
General Practice	3					
Health & Hospital Law	1					
Immigration Law	1					
Other Civil Law	2					
Personal Injury (Plaintiff)	1					
Probate, administration, decedent's estates, guardianship & conservatorship.	3					
Probate litigation, decedent's estates, guardianship & conservatorship.	3					
Probate, Trust Administration	2					
Public Corporation Law ( including city, municipal and village)	3					
Real Estate	7	150	200	191	250	250
Tax Law	1					
Total	50	165	200	200	240	250

Field of Practice by Hourly Billing Rate		Bay City/Midland/Saginaw Area				
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Administrative Law	5	125	125	143	180	200
Alternative Dispute Resolution	1					
Bankruptcy, Creditor	2					
Bankruptcy, Debtor	4					
Business Planning	5	175	175	185	200	225
Civil Rights	1					
Collections, Creditor	6	150	190	180	200	225
Collections, Debtor	2					
Construction Law	1					
Criminal (Private Defendant)	4					
Criminal (Public Defendant)	3					
Employment Litigation (Defendant)	2					
Employment Litigation (Plaintiff)	3					



Field of Practice by Hourly Billing Rate	Bay City/Midland/Saginaw Area					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Family Law	16	150	175	175	198	250
Foreclosure, Debtor	1	150	150	150	150	150
Foreclosure, Lender	1					
General Practice	12					
Insurance Law	3					
Intellectual Property/Trade Secrets	3					
Labor Law (Defendant)	1					
Landlord/Tenant (Residential)	1					
Medical Malpractice (Plaintiff)	1					
Medical Malpractice (Defendant)	2					
Other Civil Law	9	150	175	181	225	235
Personal Injury (Defendant)	4					
Personal Injury (Plaintiff)	5	175	175	180	200	200
Probate, administration, decedent's estates, guardianship & conservatorship.	15	150	180	188	225	250
Probate litigation, decedent's estates, guardianship & conservatorship.	5	175	200	200	200	250
Probate, Trust Administration	4					
Public Benefits	1	250	250	250	250	250
Public Corporation Law ( including city, municipal and village)	4					
Real Estate	10	175	193	195	225	250
Tax Law	3					
Workers' Compensation, Employee	3					
Workers' Compensation, Employer	1					
Total	144	150	175	179	200	250

Field of Practice by Hourly Billing Rate	Flint Area					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Administrative Law	2					
Alternative Dispute Resolution	4					
Appellate Law	2					
Bankruptcy, Creditor	2					
Bankruptcy, Debtor	8	178	190	204	213	300
Business Planning	5	150	200	210	260	290
Civil Rights	3					
Collections, Creditor	3					
Collections, Debtor	2					
Construction Law	1					
Consumer Law (including lemon law)	4					
Criminal (Private Defendant)	7	125	150	193	250	400
Criminal (Public Defendant)	8	45	138	121	188	200
Employment Litigation (Defendant)	3					
Employment Litigation (Plaintiff)	6	200	225	242	300	300
Family Law	20	150	175	176	200	250
Foreclosure, Debtor	2					
Foreclosure, Lender	1					
General Practice	22	175	178	194	225	250

Field of Practice by Hourly Billing Rate	Flint Area					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Health & Hospital Law	3					
Insurance Law	7	125	130	163	150	350
Intellectual Property/Trade Secrets	1					
Labor Law (Defendant)	3					
Labor Law (Plaintiff)	1					
Landlord/Tenant (Residential)	4					
Medical Malpractice (defendant)	1					
Other Civil Law	15	180	215	252	300	500
Personal Injury (Defendant)	3	125	125	127	130	130
Personal Injury (Plaintiff)	11	250	300	325	450	500
Probate, administration, decedent's estates, guardianship & conservatorship.	7	185	200	204	225	250
Probate litigation, decedent's estates, guardianship & conservatorship.	3					
Probate, Trust Administration	7	175	195	200	225	260
Probate, Trust Litigation	1					
Public Corporation Law ( including city, municipal and village)	6	120	135	141	175	180
Real Estate	7	180	200	211	215	290
Tax Law	4					
Workers' Compensation, Employee	1					
Workers' Compensation, Employer	1					
Total	191	150	195	204	240	350

Field of Practice by Hourly Billing Rate	Grand Rapids Area					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Administrative Law	6	250	305	303	350	420
Alternative Dispute Resolution	8	245	300	280	325	350
Appellate Law	10	250	265	287	305	600
Auto (not lemon) Law	3					
Bankruptcy, Creditor	6	175	190	196	250	270
Bankruptcy, Debtor	18	195	210	214	225	300
Business Planning	36	198	240	252	290	435
Civil Rights	3					
Collections, Creditor	15	180	210	228	300	365
Collections, Debtor	2					
Condemnation Law	2					
Construction Law	14	220	250	261	285	410
Consumer Law (including lemon law)	1					
Criminal (Private Defendant)	18	200	223	234	250	350
Criminal (Public Defendant)	11	75	190	162	200	300
Employment Litigation (Defendant)	10	175	268	260	375	450
Employment Litigation (Plaintiff)	10	240	298	281	300	400
Environmental law	7	220	300	316	420	460
Family Law	53	200	200	223	250	335
General Practice	39	175	210	220	250	350
Health & Hospital Law	8	243	303	308	378	415
Immigration Law	3					

Field of Practice by Hourly Billing Rate	Grand Rapids Area					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Insurance Law	20	135	158	199	200	403
Intellectual Property/Trade Secrets	9	190	300	282	340	430
Labor Law (Defendant)	5	240	290	293	305	415
Labor Law (Plaintiff)	2					
Landlord/Tenant (Commercial)	2					
Landlord/Tenant (Residential)	2					
Medical Malpractice (Plaintiff)	4					
Medical Malpractice (Defendant)	2					
Other Civil Law	45	200	250	265	305	400
Other Professional Liability	3					
Personal Injury (Defendant)	14	135	150	166	175	250
Personal Injury (Plaintiff)	17	200	275	281	305	500
Probate, administration, decedent's estates, guardianship & conservatorship.	28	163	200	223	238	445
Probate litigation, decedent's estates, guardianship & conservatorship.	9	225	240	239	250	300
Probate, Trust Administration	12	208	235	260	295	445
Probate, Trust Litigation	4					
Product Liability	5	200	245	279	300	450
Public Benefits	3					
Public Corporation Law (including city, municipal and village)	10	150	178	193	265	285
Real Estate	39	195	230	245	250	440
Securities Law	2					
Tax Law	5	240	315	285	335	400
Workers' Compensation, Employee	2					
Workers' Compensation, Employer	2					
Total	529	180	225	240	300	405

Field of Practice by Hourly Billing Rate	Jackson Area					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Administrative Law	1					
Bankruptcy, Creditor	1					
Bankruptcy, Debtor	2					
Business Planning	4					
Civil Rights	2					
Collections, Creditor	1					
Collections, Debtor	1					
Construction Law	2					
Criminal (Private Defendant)	5	175	180	177	180	200
Criminal (Public Defendant)	3					
Employment Litigation (Defendant)	2					
Employment Litigation (Plaintiff)	2					
Family Law	8	150	163	173	180	250
General Practice	16	170	180	199	225	300
Insurance Law	1					
Intellectual Property/Trade Secrets	1					
Labor Law (Defendant)	2					

Field of Practice by Hourly Billing Rate	Jackson Area					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Landlord/Tenant (Residential)	4					
Other Civil Law	6	150	225	219	290	300
Personal Injury (Defendant)	2					
Personal Injury (Plaintiff)	0					
Probate, administration, decedent's estates, guardianship & conservatorship.	7	150	175	181	200	220
Probate litigation, decedent's estates, guardianship & conservatorship.	2					
Probate, Trust Administration	3					
Public Corporation Law (including city, municipal and village)	2					
Real Estate	9	150	175	179	200	250
Tax Law	1					
Total	90	150	178	192	200	290

Field of Practice by Hourly Billing Rate	Kalamazoo Area					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Alternative Dispute Resolution	2					
Appellate Law	1					
Bankruptcy, Creditor	2					
Bankruptcy, Debtor	1					
Business Planning	10	225	288	281	310	385
Civil Rights	1					
Collections, Creditor	6	125	175	178	250	290
Construction Law	4					
Criminal (Private Defendant)	6	150	175	172	220	255
Criminal (Public Defendant)	3					
Employment Litigation (Defendant)	2					
Employment Litigation (Plaintiff)	2					
Environmental law	1					
Family Law	10	175	200	203	240	265
Foreclosure, Lender	1					
General Practice	14	175	208	215	250	300
Immigration Law	2					
Insurance Law	1					
Intellectual Property/Trade Secrets	1					
Landlord/Tenant (Commercial)	2					
Landlord/Tenant (Residential)	3					
Other Civil Law	12	185	270	247	303	365
Personal Injury (Defendant)	4					
Personal Injury (Plaintiff)	1					
Probate, administration, decedent's estates, guardianship & conservatorship.	7					
Probate litigation, decedent's estates, guardianship & conservatorship.	2					
Probate, Trust Administration	5	230	250	239	275	280
Public Benefits	1					
Real Estate	9	175	200	216	225	365

Field of Practice by Hourly Billing Rate	Kalamazoo Area					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Securities Law	1					
Tax Law	2					
Workers' Compensation, Employee	2					
Workers' Compensation, Employer	2					
Total	123	150	200	214	275	350

Field of Practice by Hourly Billing Rate	Lansing Area					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Administrative Law	16	190	255	266	288	475
Alternative Dispute Resolution	3					
Appellate Law	13	250	275	298	350	475
Auto (not lemon) Law	3					
Bankruptcy, Creditor	4					
Bankruptcy, Debtor	7	150	210	219	275	300
Business Planning	20	160	215	213	250	318
Civil Rights	4					
Collections, Creditor	4					
Condemnation Law	1					
Construction Law	8	183	233	221	250	290
Consumer Law (including lemon law)	3					
Criminal (Private Defendant)	19	175	200	218	250	350
Criminal (Public Defendant)	11	45	150	119	175	225
Employment Litigation (Defendant)	4					
Employment Litigation (Plaintiff)	2					
Environmental law	6	180	268	265	300	425
Family Law	38	170	200	204	250	300
Foreclosure, Debtor	1					
Foreclosure, Lender	2					
General Practice	27	150	200	213	250	350
Health & Hospital Law	5	200	200	222	240	320
Immigration Law	3					
Insurance Law	4					
Intellectual Property/Trade Secrets	3					
Labor Law (Defendant)	2					
Labor Law (Plaintiff)	4					
Landlord/Tenant (Commercial)	2					
Landlord/Tenant (Residential)	3					
Medical Malpractice (Plaintiff)	2					
Medical Malpractice (Defendant)	4					
Other Civil Law	26	150	263	260	350	445
Other Professional Liability	1					
Personal Injury (Defendant)	2					
Personal Injury (Plaintiff)	9	200	250	304	400	600
Probate, administration, decedent's estates, guardianship & conservatorship.	25	150	180	184	215	300
Probate litigation, decedent's estates, guardianship & conservatorship.	3					

Field of Practice by Hourly Billing Rate	Lansing Area					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Probate, Trust Administration	8	165	220	209	250	300
Probate, Trust Litigation	1					
Public Benefits	1	320	320	320	320	320
Public Corporation Law ( including city, municipal and village)	7	150	190	194	225	260
Real Estate	14	145	160	166	200	250
Securities Law	1					
Tax Law	8	198	280	248	300	375
Workers' Compensation, Employee	2					
Workers' Compensation, Employer	1					
Total	337	150	200	223	260	415

Field of Practice by Hourly Billing Rate	Livingston County					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Appellate Law	1					
Bankruptcy, Creditor	2					
Bankruptcy, Debtor	1					
Business Planning	5	225	225	217	225	250
Civil Rights	2					
Collections, Creditor	3					
Construction Law	1					
Consumer Law (including lemon law)	1					
Criminal (Private Defendant)	2					
Criminal (Public Defendant)	1					
Employment Litigation (Defendant)	1					
Employment Litigation (Plaintiff)	1					
Family Law	11	150	175	185	200	250
Foreclosure, Debtor	1					
General Practice	5	200	225	205	225	225
Intellectual Property/Trade Secrets	1					
Labor Law (Plaintiff)	1					
Landlord/Tenant (Residential)	3					
Personal Injury (Defendant)	1					
Probate, administration, decedent's estates, guardianship & conservatorship.	3					
Probate litigation, decedent's estates, guardianship & conservatorship.	2					
Probate, Trust Administration	7	185	225	219	245	250
Probate, Trust Litigation	1					
Product Liability	0					
Public Benefits	1					
Public Corporation Law ( including city, municipal and village)	1					
Real Estate	7	185	200	198	225	225
Securities Law	1					
Total	67	175	200	201	225	250

Field of Practice by Hourly Billing Rate	Macomb County					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Administrative Law	2					
Alternative Dispute Resolution	3					
Appellate Law	2					
Auto (not lemon) Law	1					
Bankruptcy, Creditor	2					
Bankruptcy, Debtor	13	195	200	220	250	350
Business Planning	14	175	235	230	275	325
Civil Rights	5	220	300	269	300	325
Collections, Creditor	4					
Construction Law	3	200	300	267	300	300
Consumer Law (including lemon law)	1					
Criminal (Private Defendant)	32	150	200	204	250	300
Criminal (Public Defendant)	17	50	125	113	150	200
Employment Litigation (Defendant)	1					
Employment Litigation (Plaintiff)	4					
Family Law	40	163	200	197	225	300
Foreclosure, Debtor	1					
Foreclosure, Lender	1					
General Practice	40	175	200	200	220	290
Health & Hospital Law	1					
Immigration Law	2					
Insurance Law	6	145	148	186	250	300
Intellectual Property/Trade Secrets	3					
Labor Law (Defendant)	2					
Labor Law (Plaintiff)	1					
Landlord/Tenant (Commercial)	2					
Landlord/Tenant (Residential)	1					
Medical Malpractice (defendant)	3					
Other Civil Law	11	150	200	212	250	325
Other Professional Liability	1					
Personal Injury (Defendant)	7	145	150	156	175	200
Personal Injury (Plaintiff)	20	200	250	256	300	450
Probate, administration, decedent's estates, guardianship & conservatorship.	31	175	200	210	250	300
Probate litigation, decedent's estates, guardianship & conservatorship.	10	200	225	231	250	300
Probate, Trust Administration	6	200	225	253	250	425
Probate, Trust Litigation	3					
Product Liability	1					
Public Benefits	1					
Public Corporation Law ( including city, municipal and village)	1					
Real Estate	15	200	225	233	275	325
Tax Law						
Workers' Compensation, Employee	4					
Total	321	175	200	212	250	325

Field of Practice by Hourly Billing Rate	Muskegon/Mid-Michigan					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Administrative Law	2					
Alternative Dispute Resolution	3					
Bankruptcy, Debtor	3					
Business Planning	14	150	195	194	220	325
Civil Rights	1					
Collections, Creditor	4					
Criminal (Private Defendant)	5	175	175	179	195	300
Criminal (Public Defendant)						
Employment Litigation (Plaintiff)	1					
Family Law	15	160	180	189	200	300
General Practice	12	155	178	180	205	225
Health & Hospital Law	1					
Immigration Law	1					
Intellectual Property/Trade Secrets	1	250	250	250	250	250
Labor Law (Defendant)	2					
Labor Law (Plaintiff)	1					
Landlord/Tenant (Residential)	1					
Medical Malpractice (Plaintiff)	1					
Other Civil Law	5	175	225	216	235	345
Other Professional Liability	1					
Personal Injury (Defendant)	1					
Personal Injury (Plaintiff)	5	150	250	217	250	400
Probate, administration, decedent's estates, guardianship & conservatorship.	6	160	193	191	200	250
Probate litigation, decedent's estates, guardianship & conservatorship.	2					
Probate, Trust Administration	2					
Probate, Trust Litigation	1					
Public Corporation Law ( including city, municipal and village)	3					
Real Estate	9	165	220	207	225	325
Tax Law	3	200	225	222	240	240
Workers' Compensation, Employee	1	125	125	125	125	125
Total	111	150	195	192	225	325

Field of Practice by Hourly Billing Rate	Oakland County					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Administrative Law	18	150	200	243	345	430
Alternative Dispute Resolution	17	230	300	294	350	450
Appellate Law	39	185	250	260	340	450
Auto (not lemon) Law	37	150	350	401	500	900
Bankruptcy, Creditor	24	175	200	222	253	330
Bankruptcy, Debtor	34	175	200	218	270	330
Business Planning	102	210	250	269	300	400
Civil Rights	17	230	325	306	350	450
Collections, Creditor	50	165	198	194	250	255
Collections, Debtor	3					
Condemnation Law	5	250	300	356	600	600



Field of Practice by Hourly Billing Rate	Oakland County					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Construction Law	35	195	225	232	265	350
Consumer Law (including lemon law)	13	300	320	341	375	695
Criminal (Private Defendant)	46	185	218	228	250	400
Criminal (Public Defendant)	17	50	150	162	225	500
Employment Litigation (Defendant)	34	195	250	251	300	430
Employment Litigation (Plaintiff)	29	250	295	297	375	500
Environmental law	14	225	293	303	350	460
Family Law	93	185	200	224	250	350
Foreclosure, Debtor	8	150	193	214	263	350
Foreclosure, Lender	17	175	190	194	200	250
General Practice	114	195	225	225	250	325
Health & Hospital Law	16	218	300	293	375	420
Immigration Law	7	200	250	240	295	300
Insurance Law	67	140	225	282	345	850
Intellectual Property/Trade Secrets	43	200	265	287	375	450
Labor Law (Defendant)	17	230	300	293	360	485
Labor Law (Plaintiff)	7	150	150	160	200	200
Landlord/Tenant (Commercial)	15	200	250	242	295	385
Landlord/Tenant (Residential)	15	175	180	192	225	300
Medical Malpractice (Plaintiff)	29	300	400	387	450	600
Medical Malpractice (Defendant)	18	140	153	158	170	265
Other Civil Law	115	200	250	281	340	515
Other Professional Liability	13	175	225	237	250	400
Personal Injury (Defendant)	52	140	150	166	180	305
Personal Injury (Plaintiff)	102	300	350	382	450	600
Probate, administration, decedent's estates, guardianship & conservatorship.	72	183	225	232	273	350
Probate litigation, decedent's estates, guardianship & conservatorship.	33	210	250	254	290	410
Probate, Trust Administration	38	200	255	258	285	400
Probate, Trust Litigation	13	275	275	295	300	410
Product Liability	23	200	240	248	315	350
Public Benefits	5	150	175	185	250	250
Public Corporation Law ( including city, municipal and village)	12	115	130	144	150	225
Real Estate	118	200	250	253	295	385
Securities Law	15	245	275	278	315	355
Tax Law	40	250	283	295	333	460
Workers' Compensation, Employee	7	200	300	257	350	350
Workers' Compensation, Employer	6	100	103	113	135	150
Total	1667	190	250	261	300	485

Field of Practice by Hourly Billing Rate	Other Metro Areas					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Administrative Law	1					
Appellate Law	2					
Bankruptcy, Creditor	1					

Field of Practice by Hourly Billing Rate	Other Metro Areas					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Bankruptcy, Debtor	1					
Business Planning	3					
Collections, Creditor	1					
Construction Law	1					
Criminal (Private Defendant)	5	175	180	170	195	200
Criminal (Public Defendant)	4					
Family Law	10	175	188	189	200	300
General Practice	5	200	210	211	220	250
Insurance Law	2					
Labor Law (Plaintiff)	1					
Other Civil Law	2					
Personal Injury (Defendant)	1					
Probate, administration, decedent's estates, guardianship & conservatorship.	9	150	175	173	200	250
Probate litigation, decedent's estates, guardianship & conservatorship.	1					
Probate, Trust Administration	1					
Public Corporation Law ( including city, municipal and village)	1					
Real Estate	3					
Total	55	150	180	177	220	250

Field of Practice by Hourly Billing Rate	Out-State Lower Peninsula					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Administrative Law	1					
Alternative Dispute Resolution						
Appellate Law	1					
Bankruptcy, Creditor	1					
Bankruptcy, Debtor	4					
Business Planning	10	185	225	227	250	350
Civil Rights	1					
Collections, Creditor	4					
Collections, Debtor	1					
Construction Law	1					
Consumer Law (including lemon law)	1					
Criminal (Private Defendant)	20	150	175	175	198	250
Criminal (Public Defendant)	14	55	113	124	190	225
Employment Litigation (Defendant)	1					
Employment Litigation (Plaintiff)	4					
Environmental law	2					
Family Law	42	150	175	177	195	225
Foreclosure, Lender	1	170	170	170	170	170
General Practice	42	165	175	179	195	225
Health & Hospital Law	1					
Immigration Law	3					
Insurance Law	3					
Intellectual Property/Trade Secrets	2					

Field of Practice by Hourly Billing Rate	Out-State Lower Peninsula					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Landlord/Tenant (Residential)	3					
Medical Malpractice (Plaintiff)	1					
Other Civil Law	13	165	180	208	225	420
Other Professional Liability	0					
Personal Injury (Defendant)	1					
Personal Injury (Plaintiff)	9	200	250	244	275	300
Probate, administration, decedent's estates, guardianship & conservatorship.	30	150	175	200	225	400
Probate litigation, decedent's estates, guardianship & conservatorship.	8	150	185	183	210	225
Probate, Trust Administration	12	200	210	239	250	420
Probate, Trust Litigation	1					
Public Benefits	3					
Public Corporation Law ( including city, municipal and village)	10	125	138	148	175	195
Real Estate	25	175	200	195	225	250
Securities Law	1					
Tax Law	2					
Workers' Compensation, Employee	4					
Workers' Compensation, Employer	1					
Total	286	150	180	189	220	275

Field of Practice by Hourly Billing Rate	Traverse City Area					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Alternative Dispute Resolution	7	175	185	194	250	250
Appellate Law	1					
Bankruptcy, Creditor	2					
Bankruptcy, Debtor	1					
Business Planning	9	200	200	205	215	250
Civil Rights	1					
Collections, Creditor	7	150	180	184	205	300
Criminal (Private Defendant)	5	175	180	173	185	200
Criminal (Public Defendant)	5	60	70	90	125	150
Employment Litigation (Defendant)	2					
Employment Litigation (Plaintiff)	1					
Environmental law	4					
Family Law	18	170	183	186	200	300
General Practice	13	175	200	211	250	325
Health & Hospital Law	2					
Immigration Law	1					
Insurance Law	3					
Intellectual Property/Trade Secrets	3					
Labor Law (Defendant)	1					
Medical Malpractice (Plaintiff)	2					
Other Civil Law	7	150	175	176	200	215
Personal Injury (Defendant)	1					
Personal Injury (Plaintiff)	5	225	250	285	300	450

Field of Practice by Hourly Billing Rate	Traverse City Area					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Probate, administration, decedent's estates, guardianship & conservatorship.	16	148	190	171	200	250
Probate litigation, decedent's estates, guardianship & conservatorship.	3					
Probate, Trust Administration	7	185	200	200	200	250
Probate, Trust Litigation	1					
Public Benefits	1					
Public Corporation Law ( including city, municipal and village)	2					
Real Estate	15	175	210	213	250	325
Tax Law	2					
Workers' Compensation, Employer	1					
Total	149	170	200	194	215	300

Field of Practice by Hourly Billing Rate	Upper Peninsula					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Alternative Dispute Resolution	1					
Appellate Law	1					
Bankruptcy, Creditor	1					
Bankruptcy, Debtor	1					
Business Planning	4					
Collections, Creditor	1					
Collections, Debtor	1					
Construction Law	1					
Criminal (Private Defendant)	6	145	175	170	200	200
Criminal (Public Defendant)	6	55	103	106	125	200
Employment Litigation (Defendant)	1					
Employment Litigation (Plaintiff)	2					
Family Law	13	125	150	153	175	200
Foreclosure, Lender	1					
General Practice	10	125	150	169	200	390
Insurance Law	3					
Other Civil Law	3					
Personal Injury (Defendant)	1					
Personal Injury (Plaintiff)	3					
Probate, administration, decedent's estates, guardianship & conservatorship.	7	50	150	115	160	175
Probate, Trust Administration	2					
Public Benefits	1					
Public Corporation Law ( including city, municipal and village)	4					
Real Estate	8	138	163	153	188	200
Securities Law	1					
Workers' Compensation, Employee	2					
Total	85	125	150	152	175	200

Field of Practice by Hourly Billing Rate	Wayne County					
	N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Administrative Law	8	213	233	249	250	420
Alternative Dispute Resolution	9	200	250	279	340	500
Appellate Law	24	160	198	232	305	455
Auto (not lemon) Law	9	135	225	244	355	450
Bankruptcy, Creditor	25	220	290	319	430	525
Bankruptcy, Debtor	27	175	200	205	250	300
Business Planning	27	205	250	260	285	450
Civil Rights	9	220	300	285	350	545
Collections, Creditor	16	175	195	228	298	460
Collections, Debtor	4	213	250	241	270	290
Construction Law	15	175	225	220	250	375
Consumer Law (including lemon law)	6	250	283	257	300	300
Criminal (Private Defendant)	36	150	200	196	250	350
Criminal (Public Defendant)	13	50	75	93	125	200
Employment Litigation (Defendant)	23	250	275	310	375	495
Employment Litigation (Plaintiff)	5	200	250	235	250	300
Environmental law	10	225	278	323	430	525
Family Law	55	150	195	187	225	300
Foreclosure, Debtor	1					
Foreclosure, Lender	6	245	263	293	295	460
General Practice	55	150	200	199	225	300
Health & Hospital Law	10	170	223	239	255	500
Immigration Law	7	150	225	225	265	460
Insurance Law	17	150	165	218	285	455
Intellectual Property/Trade Secrets	15	200	300	308	400	560
Labor Law (Defendant)	12	258	300	328	435	545
Labor Law (Plaintiff)	7	125	165	171	225	250
Landlord/Tenant (Commercial)	5	200	255	245	300	320
Landlord/Tenant (Residential)	7	150	175	182	200	250
Medical Malpractice (Plaintiff)	5	350	500	460	500	650
Medical Malpractice (defendant)	19	135	145	151	150	200
Other Civil Law	77	185	250	269	310	515
Other Professional Liability	6	175	325	328	485	490
Personal Injury (Defendant)	17	135	150	194	195	530
Personal Injury (Plaintiff)	24	190	288	308	350	500
Probate, administration, decedent's estates, guardianship & conservatorship.	43	150	200	188	220	275
Probate litigation, decedent's estates, guardianship & conservatorship.	15	200	225	232	250	410
Probate, Trust Administration	15	200	240	237	250	305
Probate, Trust Litigation	3					
Product Liability	14	225	318	319	400	530
Public Benefits	1					
Public Corporation Law ( including city, municipal and village)	8	200	250	272	353	450
Real Estate	50	200	250	261	300	465
Securities Law	5	300	300	334	355	515
Tax Law	11	210	250	279	300	510

Field of Practice by Hourly Billing Rate		Wayne County					
		N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
Workers' Compensation, Employee		3					
Workers' Compensation, Employer		4					
	Total	783	175	220	240	290	470



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**ANDREW MCKINNON**

June 24, 2010

Willie Rushing  
2033 La Crosse  
Southfield, Mi 48076  
And  
Harry Yale  
% of Willie Rushing  
Comau Employees Association

Dear Messrs. Rushing and Yale:

By countersigning this letter, you will confirm that you have retained the law firm of Pierce, Duke Farrell & Tafelski PLC to represent Comau Employees' Association (CEA) in the matters and to the extent of the Scope of Representation set forth below. We appreciate this opportunity to serve you.

**Scope of Representation**

1. Representation of Comau Employees' Association for areas connected with decertification effort initiated by members of the bargaining unit. Included in representation are the following:
  - Representation of the CEA in matters before the National Labor Relations Board related to decertification of the Automated Systems Workers Local 1123, a Division of Michigan Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America;
  - Representation of the CEA in case 7 CA 52614 ; and
  - Any other related matters before the NLRB or any court of competent jurisdiction directly connected to the decertification effort commenced by the CEA.



This basic representation will be on an hourly basis at a rate of \$250.00 per hour.

An initial retainer of \$2,500.00 will be required to commence representation.

Thereafter the Association will be billed on a monthly basis for work performs.

The billing will be detailed billing with time attributable to assigned attorneys.

The attorneys assigned to this matter are M. Catherine Farrell and David Franks of the law firms of David Franks P.C.

2. Excluded from this retainer agreement is representation of members of the CEA on any other matters unless specifically agreed to by M. Catherine Farrell and/or David Franks.

#### **Client Cooperation**

In order to effectively advocate your interests, CEA will have an affirmative obligation to cooperate with Pierce, Duke Farrell & Tafelski PLC during the pendency of any matters covered by this Agreement. CEA's non cooperation is grounds for the firm's withdrawal.

#### **Withdrawal**

CEA will have the right to terminate our representation at any time, subject to payment of any outstanding costs and disbursements. Conversely, Pierce, Duke Farrell & Tafelski reserves the right to withdraw from representation, subject to the ethical restrictions imposed upon us by the applicable Rules of Professional Responsibility. If Pierce, Duke Farrell & Tafelski chooses to terminate representation, notice will be sent to the Union's address in care of the Union's President.

#### **Binding Agreement**

This Agreement represents the entire agreement between CEA and Pierce, Duke Farrell & Tafelski PLC. By signing below, CEA acknowledges that this Agreement has been carefully reviewed and its content understood and the Union agrees to be bound by its terms. Furthermore, CEA acknowledges that Pierce, Duke Farrell & Tafelski PLC makes no representation to the Union regarding the outcome of any matters under taken pursuant to this Agreement.

#### **Arbitration**

Any controversy or claim regarding fees and expenses arising out of or relating to this Agreement shall be settled by arbitration in the County of Oakland, state of Michigan in accordance with the Commercial Rules of the American Arbitration Association then in

effect. Each side shall pay its respective fees and the costs of an arbitrator shall be shared equally. The decision of the arbitrator shall be final and binding and may be enforced by a court of competent jurisdiction.

### **Fees and Expenses**

We believe that it is important that you clearly understand how our fees will be determined. Our fees are based on the amount of time it takes us to perform the work in the course of your representation. Our time is based upon tenths of an hour and includes telephone conversations, preparation and reading of communications, consultations between counsel, review and preparation of documents, travel time and research time. In addition to our fee, you will be responsible for all expenses and costs incurred by us on your behalf. These expenses and costs may include filing fees, travel expenses, recording and certification fees, computerized research, courier services, photocopying, postage, facsimile transmissions and telephone charges.

If you have any questions regarding any services rendered, the time spent, the fees charged or any expenses or costs expended, please contact us within ten days. If we do not hear from you within that period, the statement will be deemed to be acceptable to you. We will be relying on that assumption in continuing to render services to you.

### **Timely Payment**

You will pay the full amount of our fees, expenses and costs within thirty days of the date of each statement. If a statement is not paid timely, in accordance with our normal practice, any amounts remaining due and payable to us will be subject to a late payment charge of 1% per month (18% annually) beginning with the date of the statement and continuing until it is paid in full.

### **Retainer**

You have agreed to deliver to us a fee retainer in the amount of \$2,500.00, which will be retained in our firm trust account and will be applied to the final statement in this matter. We will begin our representation upon receipt of a copy of this letter countersigned by you as well as the fee retainer.

If these terms are agreeable, please sign below and return an executed copy to the undersigned.

Very truly yours,

**PIERCE, DUKE, FARREL & TAFELSKI PLC**

By: M. Catherine Farrell

Comau Employees' Association has reviewed and agreed to the terms of this engagement with PIERCE, DUKE, FARRELL & TAFELSKI PLC.

*M. Catherine Farrell*

**Comau Employees' Association**

By:

*Harry R. Yale Jr.* 6/28/10  
President

Exhibit 7

**United States Court of Appeals**  
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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Argued January 17, 2012

Decided March 2, 2012

No. 10-1406

COMAU, INC.,  
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD,  
RESPONDENT

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Consolidated with No. 10-1409

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On Petition for Review and  
Cross-Application for Enforcement  
of an Order of the National Labor Relations Board

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*Thomas G. Kienbaum* argued the cause for the petitioner.  
*Theodore R. Opperwall* and *Noel D. Massie* were on brief.

*David Seid*, Attorney, National Labor Relations Board,  
argued the cause for the respondent. *John H. Ferguson*,  
Associate General Counsel, *Linda Dreeben*, Deputy Associate  
General Counsel, and *Ruth E. Burdick*, Supervisory Attorney,  
were on brief.

Before: HENDERSON, TATEL and GARLAND, *Circuit  
Judges.*

Opinion for the Court filed by *Circuit Judge* HENDERSON.

KAREN LECRAFT HENDERSON, *Circuit Judge*: Petitioner Comau, Inc. (Comau) seeks review of a decision of the National Labor Relations Board (NLRB, Board) affirming the finding of an administrative law judge (ALJ) that Comau committed an unfair labor practice (ULP) in violation of section 8(a)(1) and (5) of the National Labor Relations Act (Act), 29 U.S.C. § 158(a)(1), (5). *See Comau, Inc.*, 356 N.L.R.B. No. 21, 2010 WL 4622509 (Nov. 5, 2010). The Board filed a cross-application for enforcement. For the reasons set forth below, we grant Comau's petition and vacate the Board's finding that Comau committed a ULP by unilaterally changing its employees' healthcare benefits.

### I.

Headquartered outside Detroit, Michigan, Comau designs and builds automated assembly lines and specialty tools for the automobile industry.<sup>1</sup> Over 200 of Comau's employees are represented by the Automated Systems Workers Local 1123 (Union, ASW).<sup>2</sup> The most recent collective bargaining agreement between Comau and the Union ran from March 7, 2005 through March 2, 2008. On the expiration date, the parties had not reached a new agreement but they agreed to extend the former contract's terms indefinitely until a successor contract was agreed to. The extension was terminable on 14 days' written notice by either party.

Between January 2008 and December 2008, Comau and

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<sup>1</sup> Unless otherwise noted, all facts are taken from the ALJ's decision.

<sup>2</sup> At the time the Union filed the underlying charge in this case, it was affiliated with the Michigan Regional Council of Carpenters, a unit of the United Brotherhood of Carpenters and Joiners of America.

the Union held more than twenty negotiating sessions over a new collective bargaining agreement. Comau General Counsel Edward Plawecki and Director of Labor Relations Fred Begle were Comau's chief negotiators; Peter Reuter was the Union's chief negotiator. Early in the negotiations, Comau stated that it intended to seek economic concessions from the Union and that any new agreement must either be cost-neutral or reduce Comau's costs. In particular, Comau hoped to reduce its healthcare costs<sup>3</sup> by switching Union members from a fully paid healthcare plan under which Union members paid no healthcare costs (Old Plan) to the healthcare plan Comau used for non-unionized workers under which workers paid monthly premiums (Company Plan). Comau wanted a uniform healthcare plan for all of its employees and it reached agreements with two other unions representing Comau employees to use the Company Plan. Tr. of Hearing at 318-19, *Comau, Inc.*, Case No. 7-CA-52106 (NLRB Nov. 17, 2009) (ALJ) (Hearing Transcript).

The healthcare issue became a sticking point between Comau and the ASW. In August 2008, the Union offered to insure Union members through a Union sponsored plan (Union Plan).<sup>4</sup> Under the Union Plan, Union members would pay no premiums and Comau would pay a monthly per-employee contribution for each ASW member enrolled in the Union Plan. The ASW hoped that the Union Plan would allow Comau to reduce its healthcare costs without requiring ASW members to pay premiums. Comau was receptive to the Union Plan proposal but insisted on a reduction in Comau's healthcare costs as compared to its costs under the Old Plan.

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<sup>3</sup> Comau's healthcare costs included providing benefits for hospitalization, medical treatment, dental care and vision care.

<sup>4</sup> Blue Cross/Blue Shield was the insurance carrier for all three plans—the Old Plan, the Company Plan and the Union Plan.

One of the cost issues of the Union Plan proposal involved who would pay so-called “trailing” or “trailer” costs associated with changing from the Old Plan to the Union Plan. The Old Plan was a self-insured healthcare plan under which Comau paid for each claim as it arose. That is, instead of paying its insurance carrier a fixed monthly premium, it paid the insurance carrier the cost of healthcare services it in fact incurred. Under the Union Plan, Comau would instead make fixed monthly contributions. If Comau transferred Union members to the Union Plan, Comau would continue to pay claims for healthcare services provided to Union members under the Old Plan for approximately three to six months after the transfer due to the lag time between when the claim arose and when the insurance carrier sought payment. Thus, during this period, Comau would continue to pay the monthly per-employee contribution to the Union Plan *and* pay claims under the Old Plan. The latter payments are the trailing or trailer costs.

After failing to reach an agreement on healthcare benefits and other issues, Comau declared impasse on December 3, 2008, and gave notice that same day to the Union and separately to Union members that it intended to terminate the extension of the former collective bargaining agreement and implement its last best offer on December 22, 2008. Comau’s last best offer expressly stated that its implementation date was December 22, 2008, and the Company Plan was part of its terms.<sup>5</sup> Between December 22, 2008 and March 1, 2009, Comau, in consultation with and with assistance from the Union, took various steps necessary to roll out the Company

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<sup>5</sup> In a two-page letter circulated to Union members on December 8, 2008, Comau detailed the changes it was implementing as part of its last best offer and noted that the transfer to the Company Plan would be “effective March 1 of 2009.” Letter from Management to ASW Employees at 1 (Dec. 8, 2008).

Plan, including educating Union members about the enrollment options under the Company Plan, enrolling Union members and arranging for the appropriate payroll deductions.

On the same day it declared impasse, Comau “notifie[d] the Union that it [was] prepared to continue negotiations in order to agree upon and reach a successor [collective bargaining agreement].” Notice of Imposition of Last Best Offer (Dec. 3, 2008). Comau and the Union resumed negotiations on December 8, 2008. Between December 8 and March 1, 2009, the parties met approximately ten times, generally with subcommittees focused on the healthcare benefits issue. The meetings involved primarily the amount Comau would contribute per employee to the proposed Union Plan. Over the course of these meetings, the parties grew closer on Comau’s per-employee contribution and, on February 20, 2009, the Union presented a proposal that matched Comau’s proposed contribution amount of \$835. The agreement on Comau’s per-employee contribution did not resolve all differences between the parties regarding healthcare benefits, however, and the parties remained divided over whether to break down the contribution amount into different categories depending on an employee’s family size, how to adjust Comau’s contribution amount if healthcare costs increased and the duration of the agreement.

As set forth in Comau’s last best offer, the Company Plan went into effect on March 1. Nevertheless, on March 20, the full bargaining committees of both parties met as they had yet to agree on a new collective bargaining agreement. At the meeting, Comau proposed that the Union pay all trailing costs associated with transitioning to the proposed Union Plan. Shortly after Comau made its proposal, the parties adjourned the meeting and held no further negotiating sessions.

Earlier, on March 5, the Union filed its first ULP charge



resulting from Comau's unilateral implementation of its last best offer. In a subsequent amendment, the Union amplified its charge,<sup>6</sup> alleging that on "[a]bout December 22, 2008, [Comau] unilaterally changed employees' terms and conditions of employment by implementing its 'last best offer,' without having reached good-faith impasse." Amended Charge Against Employer, Case No. 7-CA-51886 (NLRB Mar. 24, 2009). After an investigation, the Board's Regional Director dismissed the charges. The Union appealed the dismissal. On August 31, 2009, the Board General Counsel (General Counsel) denied the appeal, stating that:

Regarding the Employer's December 22, 2008 implementation of terms and conditions of employment for unit employees represented by the Union, the evidence established that the parties were at a lawful impasse when the implementation occurred.

Letter from Ronald Meisburg, General Counsel, NLRB, to Edward J. Pasternak (Aug. 31, 2009) (General Counsel Letter).

On May 19, 2009, the Union filed the ULP charge against Comau that underlies this case. The second charge originally alleged only that Comau had bargained in bad faith by having proposed on March 20 that the Union pay trailing costs, failed to provide requested financial information and refused the Union's request to continue negotiations. It made no mention of Comau's implementation of the Company Plan.

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<sup>6</sup> In its original charge, the Union alleged that Comau "violated [section] 8(a)(5) of the Act by unilaterally implementing changes in termination procedures, health benefits and other terms and conditions of employment prior to impasse." Charge Against Employer, Case No. 7-CA-51886 (NLRB Mar. 5, 2009).

On July 28, 2009, however, the Union amended the second charge to include the allegation that Comau “bargained in bad faith by . . . [u]nilaterally implementing a new health insurance plan about March 1, 2009, in the absence of bona fide bargaining impasse.” Amended Charge Against Employer, Case No. 7-CA-52016 (NLRB July 28, 2009). The Regional Director filed a complaint against Comau based on the ASW’s second ULP charge, including its allegation regarding the implementation of the Company Plan.

After conducting a hearing, an ALJ concluded that Comau’s unilateral implementation of the Company Plan constituted an unfair labor practice in violation of section 8(a)(1) and (5) of the NLRA.<sup>7</sup> *See Comau, Inc.*, 2010 WL 3285364 (NLRB May 20, 2010) (ALJ). In reaching his conclusion, the ALJ determined that Comau implemented the Company Plan on March 1, 2009 and that no impasse existed on that date. The Board affirmed, adopting the ALJ’s rulings, findings and order with minor exceptions not relevant here. *See Comau*, 356 N.L.R.B. No. 21, 1 & n.5. Comau timely filed a petition for review and the Board filed a cross-application for enforcement.

## II.

“[Our] review of NLRB decisions is deferential” and we will vacate a Board decision “only if the Board’s factual findings are not supported by substantial evidence, or the Board acted arbitrarily or otherwise erred in applying established law to the facts of the case.” *Pirlott v. NLRB*, 522 F.3d 423, 432 (D.C. Cir. 2008) (internal quotation marks and

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<sup>7</sup> The ALJ dismissed the charges that Comau had engaged in unfair bargaining by proposing that the Union pay trailing costs and by failing to grant its healthcare subcommittee the authority to enter into a binding agreement. The Board left the dismissal intact and those charges are not before us.

citation omitted). “The Board cannot ‘ignore its own relevant precedent but must explain why it is not controlling.’ ” *Manhattan Ctr. Studios, Inc. v. NLRB*, 452 F.3d 813, 816 (D.C. Cir. 2006) (quoting *B B & L, Inc. v. NLRB*, 52 F.3d 366, 369 (D.C. Cir. 1995)). “Where an agency departs from established precedent without a reasoned explanation, its decision will be vacated as arbitrary and capricious.” *Pirlott*, 522 F.3d at 432 (internal quotation marks and citation omitted).

The Board concluded that Comau violated section 8(a)(5) and (1) of the Act by unilaterally implementing the Company Plan on March 1, 2009, at which time Comau and the Union were not at impasse. Section 8(a)(5) of the Act makes it an unfair labor practice for an employer “to refuse to bargain collectively with the representatives of his employees.”<sup>8</sup> 29 U.S.C. § 158(a)(5). An employer violates its duty under section 8(a)(5) to bargain collectively with the representative of its employees “if, absent a final agreement or a bargaining impasse, he unilaterally imposes changes in the terms and conditions of employment.”<sup>9</sup> *TruServ Corp. v. NLRB*, 254 F.3d 1105, 1113 (D.C. Cir. 2001).

If parties reach a bargaining impasse, however, “an

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<sup>8</sup> Mandatory areas of collective bargaining include “wages, hours, and other terms and conditions of employment.” 29 U.S.C. § 158(d). Comau acknowledges that the healthcare benefits at issue are a mandatory area of collective bargaining under the Act. *See Comau*, 356 N.L.R.B. No. 21, 8 n.18.

<sup>9</sup> Section 8(a)(1) prohibits an employer from “ ‘interfer[ing] with, restrain[ing], or coerc[ing] employees in the exercise’ of their statutory right to bargain collectively.” *S. Nuclear Operating Co. v. NLRB*, 524 F.3d 1350, 1356 n.6 (D.C. Cir. 2008) (quoting 29 U.S.C. § 158(a)(1)) (brackets added). “A violation of [s]ection 8(a)(5) is also a violation of [s]ection 8(a)(1).” *Id.*

employer does not violate the [Act] by making unilateral changes that are reasonably comprehended within his pre-impasse proposals.”<sup>10</sup> *Serramonte Oldsmobile, Inc. v. NLRB*, 86 F.3d 227, 232 (D.C. Cir. 1996) (quoting *Am. Fed’n of Television & Radio Artists v. NLRB*, 395 F.2d 622, 624 (D.C. Cir. 1968)). “The rationale for this rule is that the employer’s unilateral imposition of the final offer breaks the impasse and therefore encourages future collective bargaining. It moves the process forward by giving one party, the employer, economic leverage.”<sup>11</sup> *Mail Contractors of Am. v. NLRB*, 514 F.3d 27, 32 (D.C. Cir. 2008) (internal quotation marks and citation omitted). An impasse must exist at the time an employer implements a unilateral change. See *Richmond Elec. Servs.*, 348 N.L.R.B. 1001, 1004 (2006) (“if the Union broke the bargaining impasse after [the employer declared impasse],” employer’s subsequent “unilateral implementation of its bargaining proposals would have been unlawful”); *Jano Graphics Inc.*, 339 N.L.R.B. 251, 251 (2003) (unilateral change violates section 8(a)(5) and (1) unless “there was . . . impasse on . . . the date of . . . unilateral implementation”).

The issue here is not *whether* an impasse existed: the Board does not dispute that an impasse existed on December

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<sup>10</sup> “A bargaining impasse . . . occurs when good faith negotiations have exhausted the prospects of concluding an agreement” and “the parties . . . have reached that point of time in negotiations when [they] are warranted in assuming that further bargaining would be futile.” *TruServ Corp.*, 254 F.3d at 1114 (internal quotation marks and citation omitted).

<sup>11</sup> Once an employer unilaterally implements changes after reaching impasse, the changes “become terms and conditions of employment that the employer may not unilaterally change without first bargaining with the union to impasse.” *Cox Ohio Publishing*, 354 N.L.R.B. No. 32, 3 (June 5, 2009).

22, 2008,<sup>12</sup> and Comau does not contest the Board's finding that no impasse existed on March 1, 2009. Instead, the issue is the date on which Comau unilaterally implemented the Company Plan: on December 22—when an impasse existed—or on March 1—when no impasse existed. We think it is clear that Comau implemented its last best offer on December 22. In notices dated December 3, 2008, Comau announced to the Union and to the Union members its decision to implement its last best offer on December 22. It informed the Union that "[Comau] shall impose its last best offer effective at 12:02 a.m. on December 22, 2008," Notice of Imposition of Last Best Offer (Dec. 3, 2008), and it also informed ASW members that "[e]ffective at 12:02 a.m. on December 22, 2008, the terms and conditions [of the last best offer] will be imposed and will be part of the terms and conditions under which you work," Notice to ASW-Represented Employees (Dec. 3, 2008). Moreover, the copy of the last best offer that Comau provided the Union and its members expressly recited that the offer's "Implementation Date" was "December 22, 2008."<sup>13</sup> Imposed Last Best Offer, Automated Systems Workers (ASW) (Dec. 3, 2008) (Imposed Last Best Offer).

The Company Plan was also unquestionably one of the terms and conditions implemented pursuant to Comau's last best offer. Article 10 of the offer specifically addressed "Hospitalization, Medical, Dental, and Vision Care" and it

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<sup>12</sup> In explaining his rejection of the Union's first ULP charge against Comau, the General Counsel stated that "the evidence established that the parties were at a lawful impasse when the implementation occurred [on December 22, 2008]." General Counsel Letter.

<sup>13</sup> Regarding the Union's first ULP charge filed on March 5, the General Counsel had likewise noted Comau's "December 22, 2008 implementation of terms and conditions of employment for [ASW members]." General Counsel Letter.

provided details about the Company Plan such as premium amounts and available coverage for dependents. Imposed Last Best Offer at 21-28. Article 10.09 was entitled “Blue Cross Medical Coverage Plans (Effective March 1, 2009)” and it provided that “[a]ll regular full time ASW employees who have been with [Comau] ninety (90) days or more will be eligible to elect medical coverage under the plans [available pursuant to Company Plan].” *Id.* at 23-24.

In its notice to ASW members dated December 8, Comau informed them that, while some changes in its last best offer were “effective December 22, 2008,” “the effective date of [the] change [to the Company Plan] will be March 1 of 2009.” Letter from Management to ASW Employees at 1 (Dec. 8, 2008). Despite the different “effective” dates, Comau was clear that the changes were “being implemented” as part of its last best offer, which, as noted above, expressly provided for implementation on December 22, 2008. *Id.* The different “effective” dates merely reflected the fact that the mechanics of transferring ASW members from the Old Plan to the Company Plan required extensive preparation. As the ALJ found, between December 2008 and March 1, 2009, Comau was required to take “a number of steps to make it possible to switch the unit employees from [the Old Plan] to the [Company Plan].” *See Comau*, 356 N.L.R.B. No. 21, 4. Despite the required additional steps and the parties’ continued negotiations after December 22, Comau was explicit that it was implementing the Company Plan—along with the other terms contained in its last best offer—on December 22. Even Peter Reuter, the Union’s chief negotiator, recognized that the required delay in the Company Plan’s effective date did not alter the implementation date of the change. At the hearing before the ALJ, he testified that because “the health insurance changes contained in Comau’s 12/22/08 *implemented offer* had an effective date of 3/1/09,” Comau and the Union continued bargaining on healthcare

changes “between *implementation* and 3/1/09.” Hearing Transcript at 193-94.

Based on these facts, we conclude that the change to the Company Plan was “reasonably comprehended” in Comau’s last best offer and that Comau unilaterally implemented the offer—including the change to the Company Plan—on December 22, 2008. *See Brooks Bros.*, 261 N.L.R.B. 876, 881-83 (1982) (employer “implement[ed] . . . a program of dental insurance immediately before [a] November 21 [union] election” even though program was not “effective [until] January 1”); *cf. NLRB v. Plainville Ready Mix Concrete Co.*, 44 F.3d 1320, 1333-34 & n.11 (6th Cir. 1995) (if employer presents negotiating proposal “as a comprehensive, integrated whole,” it is “reasonably comprehended” proposal “[will] be implemented in its entirety”) (internal quotation marks omitted). Accordingly, the Board’s finding that Comau committed a ULP when it unilaterally implemented the Company Plan was “arbitrary and capricious” because all parties agree that Comau and the Union *were* at impasse on December 22. *Mail Contractors of Am.*, 514 F.3d at 34-36 (Board’s finding that employer committed ULP by unilaterally implementing change after impasse “was arbitrary and capricious”). “[A]n employer does not violate the [Act] by making unilateral changes that are reasonably comprehended within his pre-impasse proposals” once the parties reach impasse. *Serramonte Oldsmobile*, 86 F.3d at 232; *see also Cox Ohio Publishing*, 354 N.L.R.B. No. 32, 3 (“It is well settled that after bargaining to an impasse . . . an employer does not violate the Act by making unilateral changes that are reasonably comprehended within his pre-impasse proposals.” (internal quotation marks and citation omitted; ellipsis in original)).

The Board’s contrary conclusion results from its finding that Comau did not “implement” the Company Plan until it

“became effective” on March 1, 2009. The Board adopted the ALJ’s reasoning, including his “point of no return” phraseology that “[a] change in terms of employment cannot reasonably be viewed as ‘implemented’ for unit employees at a time when that change is not being applied to a single one of those employees and the employer has not passed a ‘point of no return’ committing it to making the change at all.” *Comau*, 356 N.L.R.B. No. 21, 10. According to the ALJ, “what [Comau] did in December 2008 regarding healthcare amounted to an announcement of intent to implement the [Company] [P]lan on March 1—not the implementation of such a plan.” *Id.* The Board takes the same position before us. *See* Respondent’s Br. 29. Earlier Board decisions, however, recognize that an employer *can* implement a change in employment terms and conditions *before* the change is effective or otherwise “being applied to a single one of [its] employees.” *See ABC Auto. Prods., Corp.*, 307 N.L.R.B. 248, 249-50 (1992) (“the unilateral change was effectively implemented when it was announced” even though announcement occurred four days before change became effective); *Brooks Bros.*, 261 N.L.R.B. at 881-83; *cf. Daily News of L.A.*, 315 N.L.R.B. 1236, 1237-38 (1994) (“[W]henever the employer *by promises* or by a course of conduct has made a particular benefit part of the established wage or compensation system, then he is not at liberty unilaterally to change this benefit either for better or worse during . . . the period of collective bargaining.” (emphasis added)).

The ALJ, whose reasoning and supporting authority the Board adopted without amplification, relied on two cases—*Bryant & Stratton Business Institute*, 327 N.L.R.B. 1135 (1999), and *PRC Recording Co.*, 280 N.L.R.B. 615 (1986)—to support his “point of no return” theory but neither does so. In *PRC Recording Co.*, the Board found that assuming *arguendo* an impasse existed, it was “*instantaneously* broken



by the continuation of further bargaining” and therefore did not justify the employer’s “initiation” of a change that it kept secret both from the union and from its employees. 280 N.L.R.B. at 640 (emphasis added). In *Bryant & Stratton*, the ALJ concluded that an employer “stat[ing] that it ‘intends’ to implement [a change]” at a future date is different from the employer “say[ing] that the [change] was implemented immediately.” 327 N.L.R.B. at 1149 (emphasis added). Neither case suggests that a unilateral change can be “implemented” only when it becomes “effective.” And, importantly, neither suggests that a change not *entirely* effective on implementation must pass through stages of implementation until it reaches a stage of irreversibility before the Board will sanction it. And as the Board’s counsel conceded at oral argument, “no . . . specific case” supports the ALJ’s “point of no return” articulation. See Oral Argument Tr. at 24-25.<sup>14</sup>

Moreover, the Board’s application of the “point of no return” test would lead to an arbitrary outcome at odds with the purpose of the Act. For example, as Comau points out, if an employer implemented a last best offer providing for wage increases at set future intervals, the “point of no return” analysis, carried to its logical conclusion, would suggest that the employer could later rescind the promised wage increases if bargaining resumed in the interim. After all, wage increases due to take place in the future are no more “past the point of no return” than a new health insurance plan set to take effect at some future date.

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<sup>14</sup> Indeed, once implementation is announced, imposing a “point of no return” condition could undermine the purpose of impasse by negating the employer’s “economic leverage” during the time needed to effect the change and thus inhibit its ability to “break[] the impasse and . . . encourage[] future collective bargaining.” *Mail Contractors of Am.*, 514 F.3d at 31-32.

The ALJ, however, attempted to distinguish the two situations but we find his reasoning wholly unpersuasive. He cited *Daily News* to support his proposition that “*if* [an] employer has implemented [a] new wage plan” under which “raises . . . will not be triggered until later dates,” “it has passed the point of no return and cannot simply choose to ignore its obligation to provide the raises when the triggering dates arrive.” *Comau*, 356 N.L.R.B. No. 21, 10 n.21 (emphasis added). The ALJ is of course correct that *if* an employer implements such a plan, it cannot withhold future pay raises. But he *assumes* the answer to the underlying question at the heart of this case: namely, *when* does an employer implement a change? If a change is considered implemented only when it becomes effective, then promised wage increases would never be safe from future rescission—a result the ALJ refused to countenance. If, on the other hand, the new wage plan can be considered “implemented” even if specific pay raises “will not be triggered” until some future date, *id.*, then there is no reason for treating the Company Plan at issue in this case any differently. In other words, the ALJ’s own reasoning with respect to the wage-plan hypothetical compels the conclusion that Comau’s healthcare plan was fully “implemented” on December 22, 2008, notwithstanding the later “triggering date[]” for its specific healthcare changes. *Id.*

For the foregoing reasons, we grant Comau’s petition for review and deny the Board’s cross-application for enforcement.<sup>15</sup>

*So ordered.*

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<sup>15</sup> Given our decision, we do not reach Comau’s other claims regarding the binding effect of the General Counsel’s findings and the scope of the Board’s remedy.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

STEPHEN M. GLASSER, Regional  
Director of the Seventh Region of the  
National Labor Relations Board, for  
and on behalf of the NATIONAL  
LABOR RELATIONS BOARD,

Petitioner,

v.

Case No. 10-13683  
Honorable Patrick J. Duggan

COMAU, INC. and COMAU  
EMPLOYEES ASSOCIATION,

Respondents.

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**OPINION AND ORDER**

On September 15, 2010, Stephen M. Glasser, as Regional Director of the Seventh Region of the National Labor Relations Board (the “NLRB” or “Board”), filed a petition on behalf of the Board, seeking interim injunctive relief pursuant to § 10(j) of the National Labor Relations Act (“NLRA”), 29 U.S.C. § 160(j). The petition for injunction follows charges of unfair labor practices allegedly committed by Comau, Inc. (“Comau”) and Comau Employees Association (“CEA”), a labor union. Petitioner (hereinafter also referred to as the “NLRB” or “Board”) filed an amended petition on October 4, 2010. CEA filed an answer to the petition. Comau filed an answer to the petition and a motion to dismiss. This Court held a hearing with respect to the petition and Comau’s motion to dismiss on January 13, 2011. For the reasons that follow, the Court denies the Board’s request for an injunction pursuant to § 10(j) and Comau’s motion to dismiss.

## **I. Factual and Procedural Background**

Comau designs, builds, sells, and installs automated industrial systems, including automated assembly lines. Its headquarters are in Southfield, Michigan, and additional facilities are located in the Metropolitan Detroit area. Comau has recognized, and been dealing with, three independent labor organizations for many years. The members of the bargaining unit at issue here were represented by the Progressive Employees Association (“PEA”) from the mid-1970s forward. This unit includes highly skilled trades classifications, such as toolmakers, machine builders, pipefitters, and electricians.<sup>1</sup> In 2004, the employees voted to change the name of their union from PEA to Automated Systems Workers “(ASW”).

In 2007, the ASW’s leadership began considering the possibility of affiliating with a larger union and eventually decided upon the Michigan Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America (“MRCC”). Proponents of the ASW/MRCC merger hoped that it would, among other things, improve the ASW’s

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<sup>1</sup>Specifically, the bargaining unit at issue is defined as:

All full-time and regular part-time production and maintenance employees, inspectors and field service employees, employed by [Comau] at and out of its facilities located at 20950, 21000, and 21175 Telegraph Road, Southfield, Michigan; and 42850 West Ten Mile Road, Novi, Michigan; and machinists currently working at its 44000 Grand River, Novi, Michigan facility who formerly worked at its facility located at 21175 Telegraph Road, Southfield, Michigan, but excluding all office clerical employees, and guards and supervisors as defined in the [NLRA].”

(Doc. 1 Ex. 1 at 2 n.2.)

bargaining strength, offer more opportunities for training, and increase job opportunities for members of the bargaining unit. The merger, however, resulted in much higher union dues for members— up to \$2,500 per year compared to \$240 per year. The ASW bargaining unit voted to approve the merger with the MRCC effective March 31, 2007.

At the time of the ASW/MRCC merger, a collective bargaining agreement (“CBA”) was in effect and due to expire in March 2008. Therefore, in 2008, Comau and the ASW/MRCC began negotiations for a new CBA. The parties eventually agreed to extend the existing CBA through December 21, 2008, while negotiations proceeded. The issue of health insurance coverage was an area of contention between the parties.

Under the existing CBA, unit employees were not required to pay any premiums for the company-provided Blue Cross Blue Shield coverage. During the 2008 negotiations, Comau offered to continue the same self-insured plan, but indicated that unit employees would be required to pay health insurance premiums for their coverage. The premiums under Comau’s proposal ranged from \$57.28 to \$453.05 per month, depending on the level of benefits chosen and the type of coverage (i.e. individual, two-person, or family).

At a December 3, 2008 bargaining session, Comau declared that the parties were at impasse, gave 14 days notice that it was canceling the contract extension, and stated that it would impose its Last Best Offer on December 22 when the prior CBA expired. At the same time, Comau sent letters to bargaining unit employees describing the key changes to their insurance coverage, as well as some other rule changes, that would be imposed on

December 22. Due to the steps needed to implement the new insurance plan, Comau also informed bargaining unit employees that the new health insurance plan would not go into effect until March 1, 2009.

While Comau declared a bargaining impasse in December 2008, it continued to negotiate with ASW/MRCC representatives from December 8, 2008 through March 20, 2009. On approximately ten occasions during this time frame, the parties, through healthcare insurance subcommittees, met for negotiations regarding health insurance. One of the proposals discussed in these negotiations was the ASW/MRCC's suggestion that Comau stop paying to finance its own self-insured health insurance plan and instead make contributions to help cover the cost of insuring unit employees under an MRCC health insurance plan. Negotiations during this time period focused on the amount Comau would contribute towards its employees' coverage under the MRCC plan.

In the meantime, by late 2008, members of the bargaining unit had begun to voice their unhappiness with the ASW/MRCC. In addition to their concern that they would have to pay significant health insurance premiums, employees believed the union charged unduly high dues, was not effective in negotiating a new contract with Comau, and had failed during its brief representation to deliver promises of additional jobs and training for employees. In December 2008, all but two ASW/MRCC executive committee members met to discuss decertification of the union. The two members who did not participate in the decertification discussions were Pete Reuter and Darrell Robertson, former Comau employees who left their employment to become full-time MRCC officials following the

ASW/MRCC affiliation.

Sometime in December 2008, ASW/MRCC executive committee member Dave Baloga went to the Detroit NLRB office to find out how to accomplish decertification. In early 2009, all of the members of the executive committee, except Reuter and Robertson, voted to decertify the ASW/MRCC— their own union. Based on what Baloga learned at the NLRB, the executive committee prepared a decertification petition sometime in January 2009 to accomplish this goal.

On February 18, 2009, employee Frederick Lutz signed a written request that the ASW executive committee initiate decertification proceedings. The executive committee thereafter began gathering employee signatures (including their own) on the decertification petition, and also on individual Authorization for Representation forms authorizing the CEA to serve as the bargaining unit's collective bargaining representative. Executive committee members subsequently were warned that any member who circulated the petition could be disciplined or sued by the ASW/MRCC. Executive committee members thereafter redacted their names and signatures from the petition and turned over the responsibility for circulating the petition to employee Willie Rush. In mid-February 2009, Rush turned the decertification materials over to unit employees to pass around Comau's facilities for additional signatures.

Before March 1, 2009, eighty-four bargaining unit members (including the thirteen executive board members whose names and signatures were subsequently redacted) had

signed the petition, representing 47% of the bargaining unit.<sup>2</sup> (Doc. 31 Ex. AA.) Seventy-six employees had signed Authorization for Representation forms by that date, representing 42% of the membership. (*Id.* Ex. BB.) In the meantime, Comau had continued to prepare for the new health care plan announced in December 22, 2008. This included holding meetings for employees in January 2009 regarding the new plan and disbursing and collecting enrollment forms.

On March 1, 2009, a Sunday, Comau put the new health care plan into effect as planned. The first premiums for coverage were deducted from employee paychecks on March 6, 2009. In the nine days following the implementation of the new health insurance plan, thirty-four additional bargaining unit members signed the decertification petition and Authorization for Representation forms. (*Id.* Exs. AA, BB.)

Rushing thereafter returned the decertification petition and Authorization for Representation forms to Dan Malloy, an executive committee member. The executive committee at that point decided to delay filing the petition with the NLRB, as the ASW/MRCC had made some new promises regarding job opportunities for laid off workers that the committee hoped would materialize. When the jobs did not materialize,

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<sup>2</sup>According to ALJ Carter's decision, the parties stipulated that there were 178 employees in the bargaining unit on December 22, 2009. (Doc. 58 Ex. A at 9 n. 17.) The ALJ found evidence in the record indicating that there were 234-237 employees in the unit as of April 14, 2009. (*Id.*) Comau's and the CEA's pleadings suggest to the Court that the bargaining unit in March 2009 consisted of closer to 178 members. (*See, e.g.*, Doc. 31 at 9 (providing that 118 signatures constituted 66.2% of the membership and that 105 signatures constituted 58.9% of the membership).)



Rushing retrieved the petition from Malloy and filed it with the NLRB on or about April 14, 2009. In late April or early May 2009, Rushing met with MRCC director Doug Buckler and explained the rationale for the decertification petition: MRCC's failure to provide promised training; that the ASW's affiliation with the MRCC had not opened up members' eligibility for more jobs; the high cost of MRCC union dues; and the quality of the MRCC health insurance that the ASW/MRCC proposed belatedly in negotiations as an alternative to Comau's plan.

Meanwhile, on March 5, 2009, the ASW/MRCC (hereafter also referred to as the "Charging Union") filed charges against Comau alleging unfair labor practices based on the company's December 22, 2008 implementation of its Last Best Offer (or "LBO"), including the announcement of Comau's proposed health insurance plan. (Doc. 34 Ex. E Tabs E, F.) These charges were docketed as NLRB Case Numbers 7-CA-51886 and 7-CA-51906. On May 29, 2009, after an investigation, the Regional Director dismissed those charges. (*Id.* Tab G.) The charging union appealed that dismissal and, on August 31, 2009, the General Counsel's office denied the appeal finding that the parties were at a lawful impasse when the implementation occurred and thus Comau's implementation of its Last Best Offer did not constitute an unlawful labor practice. (*Id.* Tab H.)

Before the General Counsel's August 31 ruling, on May 19, 2009, the ASW/MRCC filed new charges alleging unfair labor practices by Comau in violation of Sections 8(a)(5) and (1) of the NLRA. These charges, docketed as NLRB Case No. 7-

CA-52106, complained of various acts of alleged “bad faith bargaining.”<sup>3</sup> The initial complaint was silent with respect to Comau’s March 1, 2009 unilateral implementation of the new health care plan. (Doc. 34 Ex. E. ¶ 21.) On July 28, 2009, however, on the advice of NLRB agent Linda Hammell, the ASW/MRCC amended the charge to also allege that Comau’s March 1, 2009 action constituted an unfair labor practice.<sup>4</sup> (*Id.* Ex. E Tabs I, J.) The Regional Director issued the Complaint (“Complaint I”) based on the charges on August 28, 2009. (*Id.* Tab K.)

The Regional Director also determined that substantial and material issues of fact existed as to whether the alleged unfair labor practices bore a causal relationship to the employee disaffection reflected in the decertification petition filed on April 14, 2009, which had been assigned Case No. 7-RD-3644. (*Id.*) The Regional Director therefore ordered the two cases heard together before an administrative law judge. (*Id.*)

Administrative proceedings were conducted before Administrative Law Judge Paul Bogas in November 2009. In the meantime, members of the bargaining unit became frustrated by the fact that the decertification petition had not resulted in an election and

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<sup>3</sup>The union charged that Comau failed to bargain in good faith by: failing to cloak its representatives with the authority to make proposals or enter into binding agreements; submitting written proposals to the Union without attempting to gain authority to do so; and introducing a new demand that the Union absorb Comau’s liability for previously accrued health insurance “trailing costs.”

<sup>4</sup>Comau contends that Hammell’s role in the amended complaint was inappropriate. The Court finds it unnecessary to address this assertion at this time.

was being held in abeyance by the Board. In December 2009, bargaining unit members researched the NLRB rules and hired a consultant. As a result, the employees prepared and circulated a “disaffection petition” on which they collected the signatures of 103 of the 178 members of the bargaining unit. (Doc. 34 Ex. H.)

In addition to stating that those signing the petition no longer wanted to be represented by the ASW/MRCC and wanted to be represented immediately by the CEA, the disaffection petition states:

We no longer want to be represented by the Automated System Workers Local 1123 (a Division of the Michigan Regional Council of Carpenters) because of the excessive dues that the Union charges us each month and because it has not come through on its promises to increase job opportunities for us – and not because Comau Inc. in the last year or so unilaterally implemented new terms of employment for us including the Company health care plan.

(*Id.*) The disaffection petition was submitted directly to Comau on December 22, 2009 (not to be confused with December 22, 2008, the date Comau imposed its Last Best Offer).

When the disaffection petition was circulated, bargaining unit members also were asked if they would be willing to sign declarations stating that they signed the disaffection petition voluntarily, of their own free will, were not coerced or forced to sign by anyone from Comau or CEA, and that they “do not want the ASW, the Carpenters Industrial Council (CIC) or the MRCC to represent [them] in collective bargaining.” (Doc. 34 Ex. DD.) 90 members of the bargaining unit signed such declarations. Members who signed the declarations were presented with two versions and, if they were willing to sign, were

asked to sign the one which best reflected their opinions. 83 of the 90 members who signed the declarations chose the version that include the above language, in addition to the phrase: “I am fearful that I may be retaliated against by the leadership of the ASW 1123 or someone from the CIC for exercising my rights under the law.” (*Id.*)

When a disaffection petition is presented to an employer, the employer generally, after validating the signatures, must, according to NLRB rules and precedents, withdraw recognition from the union then representing the bargaining unit and is permitted to recognize the union that the majority designates as their bargaining representative. Comau did just that on December 22, 2009, withdrawing recognition of the ASW/MRCC and recognizing the CEA as the bargaining unit’s designated bargaining representative.

Comau and the CEA thereafter engaged in negotiations for a new CBA. On May 14, 2010, they executed a CBA, which had been ratified by the CEA membership in April 2010. This new CBA includes the same health insurance plan implemented by Comau on March 1, 2009. The CBA also includes a union security provision which requires bargaining unit members to pay union dues to the CEA.

On December 29, 2009, the ASW/MRCC filed new charges alleging that Comau violated Sections 8(a)(1), (2), and (5) of the NLRA by withdrawing recognition of the union and giving unlawful assistance to and recognizing the CEA as the collective bargaining representative of its employees. This charge was assigned Case No. 7-CA-52614. The Charging Union filed additional charges against Comau and the CEA, on May 20, 2010, which were assigned Case Nos. 7-CA-52939 and 7-CB-16912. On July

30, 2010, a consolidated amended complaint (“Complaint II”) was issued with respect to these charges.

Complaint II alleges that Comau violated Sections 8(a)(1), (2), (3), and (5) of the NLRA by: failing and refusing to bargain collectively and in good faith with the Charging Union; dominating and interfering with the administration of, and rendering unlawful assistance to, a labor organization; discriminating against employees and thus encouraging membership in a labor organization; and interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act. As to the CEA, Complaint II alleges that the CEA violated Sections 8(b)(1)(A) and (b)(2) of the Act by: restraining and coercing employees in the exercise of rights guaranteed in Section 7 and attempting to cause Comau to discriminate against its employees such that Comau would violate Section 8(a)(3) of the Act. The alleged violations were based on two theories: (1) that the December 2009 disaffection petition that Comau used to conclude that the ASW/MRCC did not represent a majority of employees in the unit was tainted by Comau’s March 1, 2009 unilateral implementation of its new health care plan, which was alleged to constitute an unfair labor practice; and (2) that the disaffection petition was tainted because certain individuals who circulated it— specifically, Harry Yale, James Reno, and Nelson Burbo— did so with the apparent authority of Comau.

On May 20, 2010, ALJ Bogas issued his decision with respect to Complaint I, concluding that Comau engaged in an unlawful labor practice and therefore violated the NLRA when it implemented its new health care plan on March 1, 2009. (Doc. 1 Ex. 2.)

ALJ Bogas found that while Comau and the ASW/MRCC were at impasse on December 22, 2008 when Comau implemented its Last Best Offer, the impasse had passed in January 2009 when the parties continued to engage in negotiations regarding the health insurance issue. The ALJ rejected the other violations alleged in the complaint and declined to make a determination with respect to the decertification petition. Comau appealed ALJ Bogas' decision. The Board affirmed on November 5, 2010. (Doc. 49 Ex. 2.) In the interim, ALJ Geoffrey Carter conducted hearings with respect to Complaint II in August and September 2010.

On September 15, 2010, the Board filed the instant petition in this Court against Comau and the CEA pursuant to § 10(j) of the NLRA, 29 U.S.C. § 160(j). The Board filed an amended petition on October 4, 2010. In the petition, the Board alleges that Comau violated Sections 8(a)(1), (2), (3) and (5) of the NLRA when it withdrew recognition from the ASW/MRCC, recognized the CEA, and negotiated and entered into a CBA with the CEA following disaffection caused by an unremedied unfair labor practice— that being the unilateral implementation of the new healthcare plan on March 1, 2009. The Board also alleges that Comau violated the NLRA when *its* “agents,” Harry Yale, Nelson Burbo III, and James Reno, circulated the disaffection petition. The Board asks the Court to enter an injunction requiring Comau to cease and desist from recognizing the CEA as the collective bargaining representative of the bargaining unit, from giving effect to the CBA between Comau and the CEA, from unilaterally changing employees' terms and conditions of employment, and from deducting dues from

employees' wages and remitting them to the CEA.<sup>5</sup> The Board also seeks to compel Comau to recognize and bargain with the ASW, which had since become affiliated with the Carpenters Industrial Council, United Brotherhood of Carpenters and Joiners of America.

With respect to the CEA, the Board alleges that the CEA violated Sections 8(b)(1)(A) and (2) of the NLRA by accepting Comau's recognition as the bargaining representative of the unit and negotiating and entering into a CBA with Comau that requires the payment of union dues to the CEA, even though the CEA does not represent an uncoerced majority of the bargaining unit. The Board seeks to enjoin the CEA from acting as the bargaining representative of the unit and from maintaining a CBA with Comau.

Comau and the CEA filed answers to the petition on October 11, 2010. On the same date, Comau also filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). As part of its motion, Comau also seeks sanctions against Petitioner pursuant to Federal Rule of Civil Procedure 11 and 28 U.S.C. §§ 1927 and 2412. Comau argues that there is no legal or factual basis for the injunction Petitioner seeks and that

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<sup>5</sup>As discussed *infra*, after the amended petition was filed, the NLRB issued a decision with respect to Complaint I. A district court's § 10(j) injunction expires upon the issuance of a Board decision. Therefore, Petitioner moved and was granted permission on November 18, 2010 to modify the injunctive relief it seeks in this case in light of the Board's decision. The relief set forth above reflects Petitioner's modified request. (*See* Doc. 49.)

Petitioner has wrongfully aided the ASW/MRCC in pursuing charges against Comau.<sup>6</sup>

The petition and motion to dismiss have been fully briefed and the parties have submitted volumes of exhibits in support of their respective positions regarding the requested injunction. The Court held a motion hearing with respect to the pending pleadings on January 13, 2011.

Prior to the hearing, on December 14, 2010, the Regional Director issued a decision and order with respect to Case 7-RD-3644– addressing the April 14, 2009 decertification petition. (Doc. 54 Ex. A.) Finding a causal relationship between Comau’s implementation of the new health care plan on March 1, 2009, which the Board previously held constituted an unfair labor practice (“ULP”), and the decertification petition, the Regional Director concluded that the petition should be dismissed. (*Id.*)

Also prior to the hearing in this case, on December 21, 2010, ALJ Carter issued his decision with respect to Complaint II. In his decision, ALJ Carter concludes that there is a causal relationship between the loss of majority support for the ASW/MRCC evidenced in the decertification and disaffection petitions and Comau’s ULP found by ALJ Bogas and the Board– that being, Comau’s implementation of the new health care plan on March

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<sup>6</sup>In its reply brief in support of its request for sanctions, Comau indicates that “[i]t is premature to argue about sanctions” and that it only intended to provide “fair warning” to Petitioner until the underlying issues are resolved that it may be seeking sanctions. (Doc. 46 at 1.) The Court therefore will not rule on Comau’s motion for sanctions, will deny the motion without prejudice, and will allow Comau to re-file its request for sanctions if it chooses to do so once the petition for injunction is resolved. At that time, Comau can argue why, based on the resolution of the underlying issues, sanctions are appropriate.



1, 2009.<sup>7</sup> Finding that Comau engaged in unfair labor practices likely to diminish ASW/MRCC's status, ALJ Carter concludes that Comau could not lawfully withdraw recognition from the union and recognize the CEA as the bargaining representative of the unit. ALJ Carter, however, found no evidence that Comau, through its agents, facilitated or participated in the disaffection petition. Based on his rulings, ALJ Carter recommends that the Board enter an injunction similar, in part, to that sought in the present petition.

Comau and the CEA are filing exceptions to ALJ Carter's decision, which are due to be filed on February 15, 2011. (*See* Doc. 63 at 8.)

## **II. Comau's Motion to Dismiss**

As indicated previously, in addition to filing an answer to the petition, Comau has filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). A rule 12(b)(6) motion tests whether a legally sufficient claim has been pleaded in the complaint, and provides for dismissal when a plaintiff fails to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, – U.S. –, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 555, 570, 127 S. Ct. 1955, 1974

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<sup>7</sup>Complaint II also alleged that Comau and the CEA violated the NLRA by conduct that reasonably could coerce employees to sign dues-checkoff authorization forms. ALJ Carter found that the CEA engaged in this misconduct, but found no evidence that Comau did so. These findings, however, are not relevant to the injunction sought in this Court as there is no claim that this misconduct caused the employees' disaffection with the ASW/MRCC.

(2007)). A claim is facially plausible when a plaintiff pleads factual content that permits a court to reasonably infer that the defendant is liable for the alleged misconduct. *Id.* (citing *Twombly*, 550 U.S. at 556, 127 S. Ct. at 1965). This plausibility standard “does not impose a probability requirement at the pleading stage; it simply calls for enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of illegal [conduct].” *Twombly*, 550 U.S. at 556, 127 S.Ct. at 1965.

When assessing whether a plaintiff has set forth a “plausible” claim, the district court must accept all of the complaint’s factual allegations as true. *Ziegler v. IBP Hog Mkt., Inc.*, 249 F.3d 509, 512 (6th Cir. 2001). Even so, “the pleading must contain more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action.” *Twombly*, 550 U.S. at 555, 570, 127 S. Ct. at 1965. A plaintiff has the duty to provide “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do . . .” *Id.* Therefore, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, – U.S. –, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 555, 127 S. Ct. at 1965).

As an initial matter, to accept the arguments in Comau’s motion to dismiss, the Court would be required to consider matters outside the Board’s petition. For this reason alone, the Court is persuaded to deny the motion to dismiss. *See Weiner v. Klais & Co.*, 108 F.3d 86, 89 (6th Cir. 1997) (“Matters outside of the pleadings are not to be considered by a court in ruling on a 12(b)(6) motion to dismiss.”) In addition, however, the Board has adequately alleged facts in its petition, when presumed true, to render its

theories “facially plausible.” The Court therefore is denying Comau’s motion to dismiss.

In actuality, Comau’s motion is an answer to the petition which asks the Court to consider evidence submitted by Comau— and not set forth in the Board’s petition— to find that there is no causal relationship between the March 1, 2009 implementation of the new health care plan and employee disaffection *and/or* that granting the requested preliminary injunction would not be just and proper. The Court therefore will consider Comau’s motion for that purpose.

### **III. Applicable Law as to Section 10(j) Injunctive Relief**

Section 10(j) of the NLRA authorizes district courts to grant preliminary injunctions pending the Board’s adjudication of unfair labor practice cases:

The Board shall have power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

29 U.S.C. § 106(j). The Sixth Circuit Court of Appeals has set forth two findings that a district court must make before granting a § 10(j) injunction. First, the court must find “reasonable cause” to believe that the alleged unfair labor practice occurred. *Ahearn v. Jackson Hosp. Corp.*, 351 F.3d 226, 234 (6th Cir. 2003) (citing *Schaub v. West Mich. Plumbing & Heating, Inc.*, 250 F.3d 962, 969 (6th Cir. 2001)). Second, the court must determine whether injunctive relief would be “just and proper.” *Id.*

In *Ahearn*, the appellate court summarized the “reasonable cause” analysis as follows:

Petitioner’s burden of showing “reasonable cause” is “relatively insubstantial,” inasmuch as the proof requires only that the Board’s legal theory underlying the allegations of unfair labor practices be “substantial and not frivolous” and that the facts of the case be consistent with the Board’s legal theory. *Schaub*, 250 F.3d at 969 . . . In reviewing the supporting facts, a district court “need not resolve conflicting evidence between the parties” or make credibility determinations.” *Id.* . . . “Rather, so long as facts exist which could support the Board’s theory of liability, the district court’s findings cannot be clearly erroneous.” *Id.* (citations omitted). Indeed, fact-finding is inappropriate in the context of a district court’s consideration of a 10(j) petition.

351 F.3d at 237 (additional citations omitted). Further, to conclude that the facts support the Board’s legal theory, the Court need only find “some evidence in support of the petition.” *Gottfried v. Frankel*, 818 F.2d 485, 493 (6th Cir. 1987) (citing *Levine v. C & W Mining, Inc.*, 610 F.2d 432, 435 (6th Cir. 1979)).

“The ‘just and proper’ inquiry . . . turns primarily on whether a temporary injunction is necessary ‘to protect the Board’s remedial powers under the NLRA.’” *Schaub*, 154 F.3d at 279 (quoting *Calatrello v. Automatic Sprinkler Corp. of Am.*, 55 F.3d 208, 214 (6th Cir. 1995)). When making this determination, “[c]ourts must be mindful that the relief to be granted is only that reasonably necessary to preserve the ultimate remedial power of the Board and is not to be a substitute for the exercise of that power.” *Ahearn*, 351 F.3d at 239 (quoting *Schaub*, 154 F.3d at 279) (internal quotation marks and citations omitted)). “Where the Board’s remedial powers would be ineffective without a court order temporarily returning the protagonists to the positions they occupied before

occurrence of the alleged unfair labor practice, the district court normally has discretion to issue such an order.” *Schaub*, 154 F.3d at 279.

A district court does not review an ALJ’s decision on the merits of an unfair labor charge, nor does it sit in review of the final decision of the Board. Review of the Board’s determination of an unfair labor practice charge is reserved to the Courts of Appeals. *See* 29 U.S.C. § 160(f). Both decisions, however, are relevant to a district court’s assessment of the propriety of § 10(j) relief. “The ALJ is the Board’s first-level decisionmaker. Having presided over the merits hearing, the ALJ’s factual and legal determinations supply a useful benchmark against which the Director’s prospects of success may be weighed.” *Bloedern v. Francisco Foods, Inc.*, 276 F.3d 270, 288 (7th Cir. 2001).

#### **IV. Analysis**

As indicated earlier, the Board presents two legal theories in support of its § 10(j) petition. First the Board asserts that Comau’s unfair labor practice of March 1, 2009—that being, the unilateral implementation of the new health insurance plan—caused the employee’s disaffection with the ASW/MRCC and therefore Comau could not lawfully withdraw recognition of the ASW/MRCC and recognize the CEA as the unit’s bargaining representative. The Board also asserts that Comau’s agents provided unlawful assistance and encouragement related to the circulation of the disaffection petition.

This Court can quickly dispose of the Board’s second theory. As ALJ Carter, in this Court’s view, correctly found, there is no evidence that Yale, Burbo, or Reno were acting as agents of Comau when they circulated the disaffection petition or that any agent

of Comau facilitated or participated in the circulation of that petition or the earlier decertification petition. Yale, Burbo, and Reno were members of the bargaining unit and the union's executive committee. By definition, they could not be agents of the employer. *See* 29 U.S.C. § 152(2) ("The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include . . . any labor organization (other than when acting as an employer, or anyone acting in the capacity of officer or agent of such labor organization.)")

As to the Board's first theory, Comau and the CEA spend little time arguing whether Comau's March 1, 2009 implementation of the new health care plan constituted an unfair labor practice. Instead, they focus on the Board's claim of a nexus between that alleged ULP and employee disaffection and contend that the asserted nexus is not substantial and is frivolous.<sup>8</sup>

"The Board has long held that an employer may not withdraw recognition [of a union] based on employee disaffection *if* there is a causal nexus between the disaffection and unremedied unfair labor practices." *NLRB v. AT Sys. West, Inc.*, 341 NLRB 57, 59 (2004) (emphasis added) (citing *Olson Bodies, Inc.*, 206 NLRB 779, 780 (1973)).

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<sup>8</sup>Comau argued before ALJ Bogas and mentions in its brief that charges relating to the March 1, 2009 implementation of the new health care plan are precluded by the finding that its December 22, 2008 announcement of the plan did not constitute an unfair labor practice. ALJ Bogas addressed this argument in his decision, finding that the charge is not precluded. (*See* Doc.1 Ex. 2 at 16.) ALJ Bogas further found that because any impasse existing on December 22, 2008, had been eliminated as of January 7, 2009, Comau engaged in an unfair labor practice when it went ahead and implemented the new health care plan on March 1, 2009.

However, “[n]ot every unfair labor practice will taint evidence of a union’s subsequent loss of majority support; in cases involving unfair labor practices other than a general refusal to recognize and bargain, there must be specific proof of a causal relationship between the unfair labor practice and the *ensuing* events indicating a loss of support.”

*NLRB v. Lee Lumber and Bldg. Material Corp.*, 322 NLRB 175, 177 (1996) (citing *Williams Entm’t*, 312 NLRB 937, 939 (1993), *enfd.* 50 F.3d 1280 (4th Cir. 1995)). “The unremedied unfair labor practices must be of a character as to either affect the union’s status, cause employee disaffection, or improperly affect the bargaining relationship itself.” *AT Sys. West*, 341 NLRB at 59-60.

The Board has established several factors relevant in determining whether there is a causal relationship between an unfair labor practice and employee disaffection. Those factors include:

(1) the length of time between the unfair practices and the withdrawal of recognition; (2) the nature of the violations, including the possibility for a detrimental or lasting effect on employees; (3) the tendency of the violation to cause employee disaffection; and (4) the effect of the unlawful conduct on employees’ morale, organizational activities, and membership in the union.

*East Bay Automotive Council v. NLRB*, 483 F.2d 628, 634 (6th Cir. 2007) (citing *Master Slack Corp.*, 271 NLRB 78, 84 (1984)). In assessing the tendency of an unlawful labor practice to cause employee disaffection, the Board applies an objective, rather than a subjective test. *AT Systems West*, 341 NLRB at 60 (citations omitted). “[I]t is the objective evidence of the commission of unfair labor practices that has the tendency to

undermine the Union, and not the subjective state of mind of the employees, that is the relevant inquiry in this regard.” *Id.*

As ALJ Carter found in his decision, the Board has held that an employer’s unilateral imposition of a new health care plan— particularly one requiring significant employee-paid premiums not previously imposed— has the possibility of a detrimental and lasting effect on employees, as well as a tendency to cause disaffection. (Doc. 58 Ex. A at 20 (citing *Priority One Servs.*, 331 NLRB 1527 (2000) (collecting cases).) The problem in this case, however, is that employee discontent with the ASW/MRCC *preceded* the alleged unfair labor practice. In fact, the decertification petition was signed by a sufficient number of bargaining unit members (71) before March 1, 2009— when Comau unilaterally implemented the new health care plan— to require the Board to take a vote to certify the results. *See* 29 U.S.C. § 159(e)(1) (“Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 158(a)(3) of this title, of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.”) As ALJ Carter found, the disaffection petition in December 2009 simply “was essentially an effort to renew the Spring 2009 decertification movement . . .” (Doc. 58 Ex. A at 19.)

ALJ Carter found a causal connection between the employees pre-ULP signing of the decertification and the ULP because the employees were aware of the new health care



plan and its upcoming implementation. This Court finds several problems with this analysis. First, the NLRB's decisions reflect that "there must be specific proof of a causal relationship between the unfair labor practice and the *ensuing* events indicating a loss of support." *Lee Lumbar and Bldg. Material Corp.*, 322 NLRB at 177 (emphasis added).<sup>9</sup> The evidence shows that in the present case, before the unfair labor practice, a percentage of the bargaining unit's members sufficient to require an election had signed a decertification petition indicating a loss of their support in the ASW/MRCC. The evidence further shows that the loss of support for the union expanded much further than the health care issue. Executive committee members began to research how to accomplish decertification as early as December 2008. The Board already has found that the announcement of the new health care plan in December 2008 did not constitute an unfair labor practice and nothing Comau did prior to March 1, 2009 (such as preparing for and informing the employees of the change), has been suggested to have constituted an unfair labor practice.

The Court also notes that up to and following March 1, 2009, Comau still was engaged in negotiations with ASW/MRCC representatives to reach an agreement with respect to an alternative health care plan. In fact on February 20, 2009, members of the ASW/MRCC bargaining committee presented a healthcare proposal that met the amount Comau offered to contribute toward an ASW/MRCC plan and, at the end of the meeting,

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<sup>9</sup>The Board's theory, which puts the cause *after* the effect, therefore is backwards.

Comau's negotiators indicated that they would review the union's proposal and respond by March 20, 2009. Thus a day after most employees signed the decertification petition, Comau and the ASW/MRCC were close to resolving the health care issue and there was reason to believe that the health care plan in fact would not be implemented. These facts suggest that the health care issue was not the driving force behind the bargaining unit members' disaffection.

There is no evidence suggesting that the March 1, 2009 implementation of the new health care plan led to lingering resentment toward the ASW/MRCC causing bargaining unit members to sign the disaffection petition and Authorization for Representation forms in December 2009. The evidence, to the contrary, indicates that the decision to pursue the disaffection petition was born out of the NLRB's failure to act on the decertification petition filed on April 14, 2009, and the reminder as the administrative proceedings ensued that the petition was being delayed by the unfair labor charges against Comau. The Court finds no evidence that any employee discontent arising from the implementation of the new health care plan was carried forward by the administrative hearings. Significantly, the CBA that Comau and the CEA subsequently negotiated and the bargaining unit ratified included the very same health insurance plan that Comau unilaterally implemented on March 1, 2009.

The Court acknowledges that there is a scintilla of evidence suggesting a causal relationship between the alleged ULP and the disaffection of at least some members of the bargaining unit, although the Court questions whether it is sufficient to even satisfy

the Board's slight burden to demonstrate reasonable cause.<sup>10</sup> The Court flatly rejects, however, the Board's evidence of a change in ASW/MRCC meeting attendance after March 1, 2009, to demonstrate a causal connection between Comau's implementation of the new health care plan and disaffection. (*See* Doc. 1 Ex. 18.) David Baloga's assertion in his affidavit, notably prepared by Petitioner's counsel, that membership at ASW/MRCC meetings began to drop after March 1 is contrary to the meeting records and appears intentionally misleading. (Doc. 34 Ex. D Tabs 1, 3.) In fact, attendance at ASW/MRCC meetings after March 1, 2009 was frequently higher than at the same time the previous year. For example, 46 and 22 members attended meetings in April and May 2008, respectively. In comparison, in April and May 2009, attendance was 48 and 26 members.<sup>11</sup> (*Id.*) There were 26 members present at a meeting in July 2008, compared to 32 members in July 2009. (*Id.*) Only starting in August 2009 did the number of attendees decline compared to the same month the year before, yet attendance until November 2009 remained above 25 members.<sup>12</sup> (*Id.*) Because this decrease occurred at least five months after Comau's implementation of the new health care plan, the Court does not find it

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<sup>10</sup>For example, thirty four additional employees signed the decertification petition on or after March 1, 2009, and there was testimony that the new health care plan and the premiums employees would be required to pay under the plan caused, at least in part, some employees to sign the decertification petition.

<sup>11</sup>The fact that more members attended ASW/MRCC meetings *after* March 1, 2009 further supports a finding of no causation.

<sup>12</sup>Notably, attendance fell below or hovered around 25 members at certain meetings in 2008 as well, such as the meetings on May 15, 2008 (22 attendees), July 1, 2008 (26 attendees), and November 5, 2008 (25 attendees). (Doc. 34 Ex. D Tabs 1, 3.)

demonstrative of a causal relationship. However, even if the Court concluded that the Board satisfied its burden of demonstrating reasonable cause, the Court also concludes that injunctive relief is not just and proper.

The Board contends that a preliminary injunction is necessary to prevent the further “irreparable erosion” of member support for the ASW/MRCC. (Doc. 28 at 34.) The Board also argues that “without some form of immediate interim relief, employees will be unjustly deprived of the fruits of collective bargaining, . . . and industrial peace will be destabilized.” (*Id.* at 36.)

As discussed above, however, the evidence indicates that erosion of support for the ASW/MRCC reached a level sufficient to require an election before the unlawful labor practice occurred. With the exception of Reuter and Robertson (who no longer worked at Comau’s facilities) the members of the ASW/MRCC’s executive committee unanimously voted to decertify their union in late December 2008 or early January 2009. Moreover, a significant amount of time passed between December 22, 2008– when employees first became aware of the impending health care plan change– and December 22, 2009– when they signed the disaffection petition.

No member of the bargaining unit testified during the administrative proceedings that he signed the disaffection petition in December 2009 because of the implementation of the health care plan ten months earlier. In comparison, thirteen witnesses testified that Comau’s action on March 1, 2009, was *not* the cause of their decision to sign the disaffection petition. CEA sought to present ninety additional witnesses who would

testify similarly, but ALJ Carter ruled that the evidence would be cumulative. The disaffection petition also states that Comau's implementation of the new health care plan did not influence members to sign the petition; but instead, that those signing the petition were influenced by the ASW/MRCC's broken promises regarding increased job opportunities and high union dues.

Even if the employees' subjective reasons for signing the disaffection petition are not relevant in the Court's "reasonable cause" analysis, those reasons are influential in the Court's analysis of whether a preliminary injunction would be just and proper. This evidence suggests that bargaining unit members did not reject the ASW/MRCC and seek representation by CEA *because of* Comau's March 1, 2009 unfair labor practice. In this Court's view, enjoining the representation of members by their chosen union, requiring them to be represented by a union they rejected without coercion, and blocking the enforcement of a CBA negotiated by the union chosen by the membership and ratified by the members is contrary to the NLRA's goals.

There are additional factors supporting the Court's conclusion that preliminary injunctive relief would not be just and proper in this case. First, the Board was aware of the membership's discontent in early March 2009, and their signatures on the disaffection petition and Authorization for Representation forms in December 2009, asking Comau to withdraw recognition of the ASW/MRCC as their representative and to recognize the CEA instead. Yet the Board did not seek § 10(j) injunctive relief until September 15, 2010. During the Board's delay, the members proceeded with their new union and

entered into a CBA with that union as their representative.

Second, the Court finds it unlikely that membership support for the ASW/MRCC will erode any further in the time it should take the Board to review and decide whether to affirm ALJ Carter's decision. Further, there is nothing suggesting that, when the Board reaches its decision, it will be less likely to provide remedial relief if this Court does not now enter preliminary injunctive relief.

Third, the CEA points out that returning to the status quo as it existed before March 1, 2009, is no longer possible. According to the CEA, on March 1, 2010, the ASW disaffiliated from the MRCC and became an affiliate of the Carpenters Industrial Council (CIC). In March 2007, members of the bargaining unit voted to merge the ASW with the MRCC; they have not voted to accept the CIC as their bargaining representative. Finally, Comau's and the CEA's exceptions to ALJ Carter's decision are due to be filed with the Board on or before February 15, 2011. An answer to those exceptions and any cross-exceptions must be filed within 14 days of that date and the Board's policy is to issue expedited decisions in cases where § 10(j) proceedings are pending. *See* 29 C.F.R. § 102.94. Thus any preliminary injunction entered by this Court is expected to be short-lived. Considering the time that already has passed since the unlawful labor practice, it is unlikely that any harm that has ensued as a result of the unfair labor practices will become greater without such a temporary and brief injunction.

## **V. Conclusion**

For the reasons set forth above, the Court concludes that a temporary injunction

pursuant to § 10(j) is not supported by reasonable cause and/or would not be just and proper.

Accordingly,

**IT IS ORDERED**, that the petition for injunction under Section 19(j) of the National Labor Relations Act filed by Petitioner Stephen M. Glasser, Regional Director of the Seventh Region of the National Labor Relations Board, on behalf of the National Labor Relations Board is **DENIED**;

**IS IT FURTHER ORDERED**, that Comau, Inc.'s motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is **DENIED**.

DATE: February 10, 2011

s/PATRICK J. DUGGAN  
UNITED STATES DISTRICT JUDGE

Copies to:  
Counsel of Record

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

**COMAU, INC.**

**Respondent Employer**

**and**

**Cases 7-CA-52614  
and 7-CA-52939**

**AUTOMATED SYSTEMS WORKERS LOCAL 1123,  
affiliated with CARPENTERS INDUSTRIAL  
COUNCIL, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA  
Charging Party**

**and**

**COMAU EMPLOYEES ASSOCIATION (CEA)  
Party in Interest**

**COMAU EMPLOYEES ASSOCIATION (CEA)  
Respondent Union**

**and**

**Case 7-CB-16912**

**AUTOMATED SYSTEMS WORKERS LOCAL 1123,  
affiliated with CARPENTERS INDUSTRIAL  
COUNCIL, UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA  
Charging Party**

**PROOF OF SERVICE**

I hereby certify that on July 25, 2012, I caused to be served via electronic mail a copy of the following: **Respondent Union CEA's Application For Attorney Fees Under the Equal Access to Justice Act, Brief in Support** and this **Proof of Service** upon the following (see attached):

A handwritten signature in black ink, appearing to read "David J. Frank", is enclosed within a rectangular box.



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